FILED
APR 22 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM 1954.

No. 742

WILLIAM H. COMBS, EDMEE S. COMBS, MELVIN T. DURLAND, ROSELLA B. DURLAND, EDWARD KOZEL, ELIZABETH KOZEL, CHESTER A. FAULKNER, ESTELL FAULKNER, MARY JANE BOLLENBACHER, RICHARD G. BOLKE, DORIS V. BOLKE, CLIFFORD R. SCHIEFELBEIN, RENELL L. SCHIEFELBEIN, HERBERT G. RHOADS, MARY G. RHOADS, GEORGE F. WILSON, WILHELMINA EUDEAN WILSON, ALBERT CARR, GENEVIEVE CARR, NELS MARTIN KIEFER, DEETA LUCILLE KIEFER, ELKER R. NIELSEN, JR., ROBERT E. NIELSEN, ELLEN N. NIELSEN, ENTERPRISE REALTY CO., a corporation, ILLINOIS CONFERENCE ASSOCIATION OF SEVENTH DAY ADVENTISTS, a religious association, ANNA A. BORG, and ELFREDA VILMA SALZMAN,

Appellants,

vs.

THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, EVAN HOWELL, WILLIAM PRINCE and ORVILLE TAYLOR, and E. A. ROSENSTONE, Director of Public Works and Buildings of the State of Illinois ex officio, constituting (with the Governor of the State of Illinois ex officio) the Illinois State Toll Highway Commission, and LATHAM CASTLE, the Attorney General of the State of Illinois,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

STATEMENT AS TO JURISDICTION.

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Attorney for Appellants.

Dated, April 21, 1955.

The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1954.

No.

WILLIAM H. COMBS, EDMEE S. COMBS, MELVIN T. DURLAND, ROSELLA B. DURLAND, EDWARD KOZEL, ELIZABETH KOZEL, CHESTER A. FAULKNER, ESTELL FAULKNER, MARY JANE BOLLENBACHER, RICHARD G. BOLKE, DORIS V. BOLKE, CLIFFORD R. SCHIEFELBEIN, RENELL L. SCHIEFELBEIN, HERBERT G. RHOADS, MARY G. RHOADS, GEORGE F. WILSON, WILHELMINA EUDEAN WILSON, ALBERT CARR, GENEVIEVE CARR, NELS MARTIN KIEFER, DEETA LUCILLE KIEFER, ELKER R. NIELSEN, JR., ROBERT E. NIELSEN, ELLEN N. NIELSEN, ENTERPRISE REALTY CO., a corporation, ILLINOIS CONFERENCE ASSOCIATION OF SEVENTH DAY ADVENTISTS, a religious association, ANNA A. BORG, and ELFREDA VILMA SALZMAN,

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THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, EVAN HOWELL, WILLIAM PRINCE and ORVILLE TAYLOR, and E. A. ROSENSTONE, Director of Public Works and Buildings of the State of Illinois ex officio, constituting (with the Governor of the State of Illinois ex officio) the Illinois State Toll Highway Commission, and LATHAM CASTLE, the Attorney General of the State of Illinois,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

STATEMENT AS TO JURISDICTION.

(a) THE OPINIONS BELOW.

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, upon dismissing the suit after trial, is reported in 128 Federal Supplement 305. Both this opinion and the unreported opinion of the three judge court overruling the motion to dismiss are appended.

(b) THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

(i) Nature of the Proceeding.

This is a suit by numerous persons, a family holding corporation and a religious association to enjoin the Illinois Toll Highway Commission from taking any action pursuant to, or purporting to be pursuant to, the Illinois Toll Highways Act of 1953, and to have said statute adjudged unconstitutional and void as permitting and providing for the taking of the property of the plaintiffs and of persons similarly situated without due process of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States. It was filed pursuant to Title 28 U.S.C.A. 1331, the matter (exceeding in value the jurisdictional amount) arising under the due process clause of the Fourteenth Amendment of the Constitution of the United States, challenging as a denial of due process of law the statute and Commission action taken without notice and hearing, and, pursuant to Title 28 U.S.C.A. 2281 and 2284, was heard and decided by a District Court of three judges.

(ii) Date of Judgment and of Notice of Appeal.

The final judgment dismissing the complaint for want of equity, which is here sought to be reviewed, was entered on February 9, 1955, and the notice of appeal was filed on March 7, 1955, in the United States District Court for the Northern District of Illinois, Eastern Division.

(iii) The Statutory Provisions Believed to Confer Jurisdiction of the Appeal.

This court has jurisdiction of this appeal under U.S.C. A., Title 28, Sections 1253 and 2101(b).

(iv) Cases Believed to Sustain the Jurisdiction.

The following cases are believed to sustain jurisdiction of this appeal: *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U.S. 499; *Oklahoma Operating Co.* v. *Love, et al.*, 252 U.S. 331; *Davis et al.* v. *Wallace et al.*, 257 U.S. 478, 482; *Browning et al.* v. *Hooper et al.*, 269 U.S. 396; *Lehigh Valley R. Co.* v. *Commission*, 278 U.S. 24; *St. Joseph Stock Yards Co.* v. *U. S. et al.*, 298 U.S. 38; *Morgan et al.* v. *U. S. et al.*, 298 US. 468; and *Thompson et al.* v. *Consolidated Gas Utilities Corp. et al.*, 300 U.S. 55.

(v) The Statute Involved.

This case involves the validity of the Illinois statute entitled "An Act in Relation to the Construction, Operation, Regulation and Maintenance of a System of Toll Highways, and to Create the Illinois Toll Highway Commission, and to Define its Powers and Duties, and to Repeal an Act therein named," approved July 13, 1953, Illinois Laws of 1953, page 1314, Revised Statutes of Illinois, 1953, Chapter 121, Sections 314a26-314a54. The statutory provisions involved are lengthy and the text of the statute is set forth in the appendix.

(c) QUESTIONS PRESENTED BY THE APPEAL:

The following questions are presented as stated in the notice of appeal:

(1) Whether the Illinois Toll Highways Act of 1953 permits and provides for the taking of the property of the plaintiffs and of persons similarly situated without due process of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States in that the Illinois Toll Highway Commission, an autonomous administrative agency created by the Act

purportedly is empowered to lay out and construct a toll road, or a system of toll roads, in Illinois wherever in its discretion it determines so to do and is not required to make its determinations on the basis of public hearings and, in fact, has held no public hearings for such purpose, and its determinations with respect to the location and termini of any toll road are by the Act made conclusive and not subject to review by the courts, or by any administrative agency of the State of Illinois, the Act also making the Commission immune from any except certain specified suits; and in that plaintiffs and other persons similarly situated whose property the Commission intends to take in order to construct a toll road on a new route to be known as the Tri-State Toll Road have had no opportunity to be heard, and under said Act and the eminent domain law of the State of Illinois cannot be heard on their claims that the plan of the Commission to construct the aforesaid Tri-State Toll Road is contrary to the purposes expressed in the Act, unreasonable, arbitrary and not in conformity with law.

(2) Whether the legislative function of designating the termini and laying out new routes for state highways delegated to an administrative commission which, when exercised by the commission, necessarily affects property rights, may be so delegated without any provision for a public hearing.

(3) Whether a state legislature may remove from judicial consideration the question whether any project undertaken by an administrative commission requiring the taking of property constitutes a public use.

(4) Whether this case is controlled by *Rindge Co.* v. *Los Angeles County,* 262 U.S. 700.

(5) Whether the finding of fact that the Tri State Toll Highway is a public use is supported by the evidence.

(d) THE FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED:

The legislative purpose of the challenged statute is stated in Section 1 to be to promote the public welfare and to facilitate vehicular traffic. The commission created by the Act to carry out the legislative purpose is authorized in Section 7 to cause to be prepared detailed plans, specifications and estimates for the construction, *relocation*, repair, maintenance and operation of toll highways within and through the state. The statute does not fix the termini or general location of any such highway. Nowhere in the enumeration of powers in Sections 6, 7, 8, 9 and 10, nor elsewhere in the statute, is the commission expressly empowered to lay out any new routes, or to fix the termini thereof, as distinguished from existing routes.

In Section 7 the Commission is authorized to acquire in the manner that may now, or hereafter, be provided by the law of eminent domain of the state any real or personal property necessary or convenient for its authorized purpose. In Section 9(e) the Commission is authorized to lease to any person, partnership, firm, association or corporation so desiring the use of any part of the toll highways, excluding the paved portion thereof, but including the right-of-way adjoining the paved portion, for such uses as stores and hotels and for any other lawful purpose except for the tracks for railroad, railway or street railway use. In Section 6(a) the Commission is authorized to dispose of real property and any interest therein, including rights-of-way.

Section 27 provides that the State consents to suits against the Commission solely by bondholders and plaintiffs in actions at law for damages, and Section 28 pro-

vides that all determinations made by the Commission in the exercise of its discretionary powers, including without limitation the location and terminal points of any toll highway, shall be conclusive and shall not be subject to review by the courts or by any administrative agency of the State.

Under Illinois law the proceeding to condemn land for public roads is special, statutory and summary; its sole object is to ascertain the compensation to be paid and the amount is the only issue. *Department of Public Works and Buildings* v. *Sohm*, 315 Ill. 478. The petition need only set forth *by reference* the petitioner's authority, the purpose for which the property is sought to be taken, a description of the property, the names of the interested parties, and a prayer that the compensation to be paid be assessed. Sec. 2, Chap. 47, Ill. Rev. Stat. 1953. No answer is required or permitted. *Smith* v. *Chicago & Western Indiana Railroad Co.*, 105 Ill. 511; *Henry* v. *The Centralia & Chester R. R. Co.*, 121 Ill. 264. The petition need not state the particular manner in which the land is to be used; a showing of the plans and specifications is sufficient. *Pittsburgh, Ft. Wayne & Chicago Ry. Co.* v. *The Sanitary District of Chicago*, 218 Ill. 286; *Suver* v. *Chicago, Santa Fe & California Ry. Co.*, 123 Ill. 293. The court will not pass upon the legality of the organization of the petitioner. *Smith* v. *Drainage District*, 229 Ill. 155; nor upon the necessity or expediency of the project, nor upon whether the forming of the judgment as to its location over the land in question was unreasonable or arbitrary. *Department of Public Works* v. *McCaughey*, 332 Ill. 416; *Department of Public Works* v. *Pittman*, 355 Ill. 482.

The remedy of injunction in the state courts available in other jurisdictions (*City of Cincinnati* v. *Vester*, 281

U.S. 439) is not afforded plaintiffs in this case; under Section 27 of the challenged statute the Commission is subject only to bondholders' and damage suits.

The plaintiffs, owning various parcels of real property described in the complaint, charge therein that the defendants, the Toll Highway Commission and its members, have given out and threatened that they will, and are about to construct a public highway to be known as the Tri State Toll Road, on, over and across plaintiffs' said properties and other properties of many other persons, and that they will and are about to institute eminent domain proceedings to take portions of plaintiffs' said properties and of the properties of a large number of other persons, and will commit such acts unless restrained as prayed; that providing for *new routes* for state highways is a legislative function; that the Illinois Toll Highways Act of 1953 embodies provisions not contained in other highway and toll road statutes in the United States, and represents a departure from the due course of law in the United States of America and the rule of law commonly known as "the law of the land", which is exemplified in the toll road and turnpike statutes of the States of Pennsylvania, New Jersey, Ohio, West Virginia, Indiana and Oklahoma, all of which expressly authorize suits against the commissions thereby created, without condition, restriction or limitation, and none of which makes the commissions' determinations conclusive or purports to take away or restrict or qualify judicial review; that the Supreme Court of the State of Illinois has, in the case of *The People* v. *Toll Highway Commission,* 3 Ill. 2d 218, construed the Illinois Toll Highways Act and found that it does not violate any provision of the Constitution of Illinois in making the determinations of the Commission conclusive, and that

such determinations are conclusive and recourse to the courts is denied in the absence of bad faith, corruption, manifest oppression or a clear abuse of discretion entering into the Commission's determinations. (Under Illinois law abuse of discretion implies not only an erroneous conclusion, but that such conclusion was brought about by temper, humor, caprice, passion, prejudice, perversity of will, discrimination or partiality. *People ex rel. Ball* v. *Johnson,* 341 Ill. App. 423, 428.) Appended to the complaint are (a) a copy of the challenged statute; (b) a copy of the opinion of the Supreme Court of Illinois construing it; (c) copies of other Illinois statutes in which the legislature fixed the termini and general location of 185 highways; and (d) a map showing the interstate and principal state highways of Illinois.

It is further alleged that without any public hearings and the reception of evidence the Commission has planned and proposes to construct a toll highway on a new route instead of on available existing routes, running around the City of Chicago on the west from a point south of the city to a point north of the city and thence to the Wisconsin border, and traversing the properties of the plaintiffs and the residential and other properties of many other citizens in whose behalf the suit was brought; that under said statute as construed by the Supreme Court of the State of Illinois neither the unsoundness nor unreasonableness of the proposed project from the standpoints of economics, engineering, highway construction, traffic control and public welfare, as well as the rights of the plaintiffs, nor the opinions of competent engineers and traffic experts can be adduced to repel the presumption made conclusive by the statute that the judgment formed by the Commission is correct; that plaintiffs are entitled as a matter of due process of law to an

opportunity to show that the Commission's project is arbitrary and unreasonable and to have a judicial determination thereof; and by the arbitrary and unreasonable action of the Commission the plaintiffs are about to be deprived of their properties without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, and that the unlawful taking of the properties under such circumstances, though in form of law, requiring the owners to defend condemnation suits, even though against their wishes some price is fixed and paid, would be confiscation.

It is alleged that due process of law to which the plaintiffs and those whom they represent are entitled includes the clear and defined right and opportunity to resort to the courts to test the validity of the legislation and of the Commission's acts in question: (a) without intimidation by the language of the Act as construed by the Supreme Court of Illinois, and without being beset by such deterrents; (b) having a fair opportunity to repel the presumptions made conclusive by the statute as construed by said court; (c) without being denied a fair opportunity to submit evidence on the issue as to whether or not the Commission's determination of said new route is reasonable and in conformity with law to a judicial tribunal for a determination upon its own independent judgment both as to law and facts.

The defendants filed a motion to dismiss the complaint on the grounds *inter alia* that the Commission could not be sued without the consent of the State, that no cause of action was stated, and that no federal question was involved. Overruling this motion the three judge court held that

> "Even in the absence of bad faith, fraud, corruption, manifest oppression, or a clear abuse of discretion,

the legislature cannot delegate to a commission the power to select the routes and termini of toll highways, and go further and make the commission's determinations thereof conclusive and not subject to review. This is especially true where no provision is made by the Act for public hearings at any level, administrative or judicial."

All of the material allegations of the complaint are either admitted by the answer or supported by the findings of fact.

(e) REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION.

The questions presented are so substantial as to require plenary consideration because this appeal appropriately draws in question the validity under the Federal Constitution of a state statute and actions taken and threatened by a state commission.

The appeal seeks a determination whether the District Court was correct in holding (a) that the statute is constitutional and (b) that neither the failure of the challenged statute to require, nor the failure of the state commission to afford, public hearings violated the plaintiffs' rights guaranteed by the due process clause of the Fourteenth Amendment of the Constitution of the United States in view of the decisions of this court in *Chicago, Milwaukee and St. Paul R. R.* v. *Minnesota,* 134 U.S. 418; *Ex Parte Young,* 209 U.S. 123; *Washington ex rel. Oregon R. R. & Navigation Co.* v. *Fairchild, et al.,* 224 U.S. 510; *U. S., et al.* v. *B. & O. Southwestern Ry., et al.,* 226 U.S. 14; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.,* 227 U.S. 88; *Greene* v. *Louisville & Interurban R. R. Co.,* 244 U.S. 499; *Hancock* v. *City of Muskogee,* 250 U.S. 454; *Oklahoma Operating Co.* v. *Love,*

252 U.S. 331; *Davis* v. *Wallace,* 257 U.S. 478, 482; *Browning* v. *Hooper,* 269 U.S. 396; *Lehigh Valley R. Co.* v. *Commission,* 278 U.S. 24; *Manley* v. *Georgia,* 279 U.S. 1; *Southern Ry. Co.* v. *Virginia ex rel. State Highway Commission,* 290 U.S. 190; *St. Joseph Stock Yards* v. *U.S.,* 298 U.S. 38; *Morgan, et al.* v. *U.S.,* 298 U.S. 468; *Thompson* v. *Consolidated Gas Utilities Corp.,* 300 U.S. 55; *Ohio Bell Telephone Co* v. *Public Utilities Commission,* 301 U. S. 292.

Whether, as held by the three judge court, this case is controlled by *Rindge Co.* v. *Los Angeles County,* 262 U.S. 700, which dealt with a determination by a legislative, as distinguished from an administrative body, respecting the location of county roads, the owners of property affected thereby having actually been afforded a public hearing denied to the plaintiffs in this case, presents a substantial federal question. This involves, among other considerations, the failure of the District Court to observe the distinction which this Court has made between the exercise of a legislative function, either directly or by a legislative body to which the function is delegated, and the forming of judgments or determinations by a non-legislative commission to which the function is delegated; if the action results in adversely affecting the lives, liberty or property of persons under the protection of the Fourteenth Amendment no public hearing is a requirement in the former class of cases, but due process of law requires it in the latter. *Fallbrook Irrigation District* v. *Bradley,* 164 U.S. 112, 167, 174, 175; *Embree* v. *Kansas City Road District,* 240 U.S. 242; *Hancock* v. *City of Muskogee,* 250 U.S. 454; *Southern Railway Co.* v. *Virginia ex rel. State Highway Commission,* 290 U.S. 190; *Chesebro* v. *Los Angeles County Flood Control District,* 306 U.S. 459. The *Fallbrook* case was cited in the *Rindge*

case, as well as *Bragg* v. *Weaver,* 251 U.S. 57. Whether the broad language in the latter, (involving the taking of dirt to repair a road already built), removes the distinction poses a substantial federal question.

A substantial federal question is presented in whether Section 28 of the Illinois Act, as construed by the Supreme Court of that State, would make conclusive and not subject to judicial review a determination that a particular project is a public use and within the stated purposes of the Act.

This is no municipality reaching out for a nonexistent federal right as in *City of Newark* v. *New Jersey Turnpike Authority,* 342 U.S. 874, but appellants who here invoke the constitutional guaranty are people seeking to retain their homes and a religious association seeking to retain its place of worship.

Respectfully submitted,

JOHN J. YOWELL,
Chicago 2, Illinois,
Attorney for Appellants.

Dated, Chicago, Illinois, April 21, 1955.

APPENDIX.

COPY OF STATUTE HERE INVOLVED.

Laws of 1953, pages 1314 to 1327, Inclusive. Ill. Rev. Stat. 1953, Chapter 121, Secs. 314a26 to 314a54, Inclusive.

Illinois State Toll Highway Commission. (S. B. 558. Approved July 13, 1953.)

An Act in relation to the construction, operation, regulation and maintenance of a system of toll highways and to create The Illinois State Toll Highway Commission, and to define its powers and duties, and to repeal an Act therein named.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. It is hereby declared, as a matter of legislative determination, that in order to promote the public welfare, and to facilitate vehicular traffic by providing convenient, safe and modern highways designed for the accommodation of the needs of the traveling public through and within the State of Illinois, that it is necessary in the public interest to provide for the construction, operation, regulation and maintenance of a toll highway or a system of toll highways, incorporating therein the benefits of advanced engineering skill, design, experience and safety factors, to eliminate existing traffic hazards, and to prevent automotive injuries and fatalities, and to create The Illinois State Toll Highway Commission, as an instrumentality and administrative agency of the State of Illinois, and to confer upon and vest in said Commission all

powers necessary or appropriate to enable said Commission to carry out the foregoing stated legislative purpose and determination.

Sec. 2. The following words and terms as used in this Act shall have the following meanings:

(a) The word "Commission" shall mean The Illinois State Toll Highway Commission.

(b) The word "person", shall mean any individual, firm, association, partnership, corporation, trustee or legal representative.

(c) The word "owner" shall include all individuals, copartnerships, firms, associations, corporations, trustees or legal representatives, and others having any title or interest in any property, rights or easements authorized to be acquired by this Act.

(d) The words "toll highway" or "toll highways" shall mean such highways as are so designed and constructed, in the best professional judgment of the engineering staff responsible, as to accomplish the purposes of this Act.

(e) The word "toll" or "tolls" shall mean the compensation to be paid to The Illinois State Toll Highway Commission for the privilege of using any toll highway, or portions or parts thereof, by vehicular or other traffic.

(f) The word "cost" as applied to a toll highway shall embrace the cost of construction, including bridges over or under existing highways and railroads, the cost of acquisition of all land, rights of way, property rights, easements and interests acquired by the Commission for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of diverting highways,

interchange of highways, access to roads to private property, including the cost of lands or easements therefor, the cost of all machinery and equipment, financing charges, interest prior to and during construction, and for one year after completion of construction, cost of traffic estimates and of engineering and legal expenses, plans, specifications, surveys, estimates of cost and revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such toll highway, administrative expense and such other expense as may be necessary or incident to the construction of the toll highway, the financing of such construction and the placing of the highway in operation.

Sec. 3. There is hereby created a Commission to be known as The Illinois State Toll Highway Commission, which is hereby constituted an instrumentality and an administrative agency of the State of Illinois. The said Commission shall consist of the Governor and the Director of the Department of Public Works and Buildings, ex officio, and 3 commissioners appointed by the Governor from the State at large, which said commissioners and their successors are hereby authorized to carry out the provisions of this Act, and to exercise the powers herein conferred. The said Commission shall have the power to contract and be contracted with, to acquire, hold and convey personal and real property or any interest therein including rights-of-way, franchises and easements; to have and use a common seal, and to alter the same at will; to make and establish resolutions, by-laws, rules, rates and regulations, and to alter or repeal the same as the Commission shall deem necessary and expedient for the construction, operation, relocation, regulation and maintenance of a system of toll highways within and through the State of Illinois.

Sec. 4. The commission so appointed by the Governor shall hold office for four, five, and six years respectively from the date of their appointment and until their respective successors shall be duly appointed and qualified, but shall be subject to removal by the Governor for incompetency, neglect of duty or malfeasance. The respective terms of the first commissioners appointed shall be designated by the Governor at the time of appointment, but their successors shall each be appointed for a term of six years, except that ony person appointed to fill a vacancy shall serve only for the unexpired term. Commissioners shall be eligible for reappointment.

Each commissioner, other than ex officio members, shall receive an annual salary of $10,000, except the chairman, who shall receive $12,000 per annum, payable in monthly installments, and each commissioner shall be reimbursed for necessary expenses incurred in the performance of his duties.

Immediately after such appointment and qualification as hereinafter provided said commissioners shall enter upon their duties. The commissioners shall biennially select one of their number as chairman of said Commission, and shall also select biennially a secretary, who may or may not be a commissioner, and if not a commissioner fix his compensation. Three commissioners shall constitute a quorum. No vacancy in the said Commission shall impair the right of a quorum of the commissioners to exercise all the rights and perform all the duties of the Commission.

Sec. 5. Each commissioner, other than the ex officio members, shall qualify by executing and filing, as hereinafter provided, a bond in the penalty of $25,000, and the secretary, if not a member of the Commission, shall ex-

ecute and file, as hereinafter provided, a bond in the penalty of $10,000. All such bonds shall be payable to the People of the State of Illinois, and be conditioned upon the faithful performance of the duties imposed upon such commissioner or officer under this Act. Said bonds shall be subject to the approval of the Governor and of the Attorney General of the State of Illinois, and shall, when executed and so approved, be filed in the office of the Secretary of State. The said bonds herein required to be furnished shall be with a surety company, or companies, authorized to do business in this State under the laws thereof, and the cost of any official bonds required to be furnished hereunder shall be paid out of any fund subject to expenditure by the Commission.

Sec. 6. The Commission shall have the power:

(a) To acquire, own, use, hire, lease, operate and dispose of personal property, real property, any interest therein, including rights-of-way, franchises and easements.

(b) To enter into all contracts and agreements necessary or incidental to the performance of its powers under this Act.

(c) To employ and discharge without regard to any State Civil Service Act, engineering, traffic, architectural, construction and financial experts, inspectors and such other employees, as may be necessary in its judgment to carry out the purpose of this Act, and to fixe the compensation for such employees.

(d) To appoint by and with the consent of the Attorney General, assistant attorneys for such Commission, which said assistant attorneys shall be under the control, direction and supervision of the Attorney General and shall serve at his pleasure.

(e) To retain special counsel, subject to the approval of the Attorney General, as needed from time to time, and fix their compensation, provided however, such special counsel shall be subject to the control, direction and supervision of the Attorney General and shall serve at his pleasure.

(f) To construct, relocate, operate, regulate and maintain a system of toll highways through and within the State of Illinois. To facilitate such construction, operation and maintenance, the Commission shall have the full use and advantage of the engineering staff and facilities of the Division of Highways of the Department of Public Works and Buildings.

Sec. 7. The Commission shall have the power:

(a) To cause to be prepared, detailed plans, specifications and estimates, from time to time, for the construction, relocation, repair, maintenance and operation of toll highways within and through the State of Illinois.

(b) To acquire, hold and use real and personal property, including rights, rights-of-way, franchises, easements, and other interests in land as it may desire, necessary or convenient for its authorized purposes by purchase, gift, grant or otherwise, and to take title thereto; to acquire in the manner that may now or hereafter be provided for by the law of eminent domain of this State, any real or personal property (including road building materials and public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof, or rights therein, of any person, railroad, public service, public utility, or municipality or political subdivision) necessary or convenient for its authorized purpose. Such acquisition of real property, whether by purchase, gift, condemnation or otherwise, wherever necessary or convenient in

the discretion of the Commission, may include the extension of existing rights and easements of access, use and crossing held by any person or persons, interest in land abutting on existing highways; and such acquisitions of real property may be free and clear of, and without any rights or easements of access, use and crossing in favor of any person or persons including interest in any land adjacent or contiguous to the land so acquired, provided however, that nothing herein contained shall be construed to authorize the taking or damaging of any private property for such purposes by the Commission, without just compensation.

Sec. 8. The Commissioner shall have power:

(a) To pass resolutions, make by-laws, rules and regulations for the management, regulation and control of its affairs, and to fix tolls, and to make, enact and enforce all needful rules and regulations in connection with the construction, operation, management, care, regulation or protection of its property or any toll highways, constructed hereunder.

(b) To classify the kind of vehicles permitted to use any toll highways, or any part thereof, constructed hereunder; to classify lanes of traffic to be used by the different types of vehicles permitted upon said toll highways; to prescribe, by resolution, rules, traffic regulations upon said toll highway, or toll highways, not provided for in an Act entitled "An Act in relation to the regulation of traffic", approved June 9, 1935, as amended. Notice of such rules shall be conspicuously posted and displayed at reasonable intervals along said toll highways, by clearly legible markers or signs, so as to provide notice to the traveling users of the exercise of such rules and regulations. Pamphlets containing all traffic rules promulgated by the Commission shall be made available, free of charge, at each toll station.

(c) The Commission, in fixing the rate for tolls for the privilege of using the said toll highways, is authorized and directed, in fixing such rates, to base the same upon semi-annual estimates to be made, recorded and filed with the Commission. Said estimates shall include the following: The estimated total amount of the use of the toll highways; the estimated amount of the revenue to be derived therefrom, which said revenue, when added to all other receipts and income, will be sufficient to pay the expense of maintaining and operating said toll highways, including the administrative expenses of the Commission, and to discharge all obligations of the Commission as is prescribed in Section 14 of this Act. The resolutions, rules and regulations prescribing and fixing the rates of such toll shall be uniform and impartial as to each class of users of said toll highways.

(d) To accept from any municipality or political subdivision any lands, easements or rights in land needed for the operation, construction, relocation or maintenance of any toll highways, with or without payment therefor, and in its discretion to reimburse any such municipality or political subdivision out of its funds for any cost or expense incurred in the acquisition of land, easements or rights in land, in connection with the construction and relocation of the said toll highways, widening, extending roads, streets or avenues in connection therewith, or for the construction of any roads or streets forming extensions to and connections with or between any toll highways, or for the cost or expense of widening, grading, surfacing or improving any existing streets or roads or the construction of any streets and roads forming extensions of or connections with any toll highways constructed, relocated, operated, maintained or regulated hereunder by the Commission. Where property owned by a municipality or

political subdivision is necessary to the construction of an approved toll highway, if the Commission cannot reach an agreement with such municipality or political subdivision and if the use to which the property is being put in the hands of the municipality or political subdivision is not essential to the existence or the administration of such municipality or political subdivision, the Commission may acquire the property by condemnation.

Sec. 9. The Commission shall have power:

(a) To enter upon lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as may be necessary, expedient or convenient for the purposes of this Act, and such entry shall not be deemed to be a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending; provided, however, that the Commission shall make reimbursement for any actual damage resulting to such lands, waters and premises as the result of such activities.

(b) To construct, maintain and operate stations for the collection of tolls or charges upon and along any toll highways.

(c) To provide for the collection of tolls and charges for the privilege of using the said toll highways, in cash or in lieu thereof, by the issuance of coupons, tickets or tokens in quantity or lots, at a discount from the regular established rates of toll, which said coupons, tickets or tokens shall be received in lieu of cash in payment of toll or tolls. Any change, alteration in or modification of the rates for toll shall not be effective unless thirty days prior to the establishment of such rates notice thereof shall be given to the public by publication in a newspaper of general circulation, published in each of the seven largest

cities of the State as determined by the last Federal census, and such notice, or notices, thereof shall be posted and publicly displayed at each and every toll station upon or along said toll highways.

(d) To construct grade separations at intersections with any railroads, street railways, streets, thoroughfares, public roads or highways intersected by the said toll highways, and to change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separation. The Commission is authorized to provide such grade separations at its own cost or to enter into contracts or agreements with reference to division of cost therefor with any municipality or political subdivision of the State of Illinois, or with the Federal Government, or any agency thereof, or with any corporation, individual, firm, person or association.

(e) To contract with and grant concessions to or to lease to any person, partnership, firm, association or corporation so desiring the use of any part of any toll highways, excluding the paved portion thereof, but including the right of way adjoining, under, or over said paved portion for the placing of telephone, telegraph, electric, power lines and other utilities, and for the placing of pipelines and to contract with and grant concessions to or to lease to any person, partnership, firm, association or corporation so desiring the use of any part of the toll highways, excluding the paved portion thereof, but including the right of way adjoining said paved portion for motor fuel service stations and facilities, garages, stores, hotels and restaurants, or for any other lawful purpose, except for the tracks for railroad, railway or street railway use, and to fix the terms, conditions, rents, rates and charges for such use.

The Commission shall also have power to establish reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called public utilities) of any public utility as defined in "An Act concerning public utilities," approved June 29, 1921, as amended, along, over or under any toll road project. Whenever the Commission shall determine that it is necessary that any such public utility facilities which now are located in, on, along, over or under any project or projects be relocated or removed entirely from any such project or projects, the public utility owing or operating such facilities shall relocate or remove the same in accordance with the order of the Commission. All costs and expenses of such relocation or removal, including the cost of installing such facilities in a new location or locations, and the cost of any land or lands, or interest in land, or any other rights required to accomplish such relocation or removal shall be ascertained and paid by the Commission as a part of the cost of any such project or projects, and further, there shall be no rent, fee or other charge of any kind imposed upon the public utility owning or operating any facilities ordered relocated on the properties of the said Commission and the said Commission shall grant to the said public utility owning or operating said facilities and its successors and assigns the right to operate the same in the new location or locations for as long a period and upon the same terms and conditions as it had the right to maintain and operate such facilities in their former location or locations.

Sec. 10. The Commission is authorized, without limitation to the foregoing powers to accept grants from and enter into contracts, leases, or other transactions with the

Federal government, or any agency thereof, necessary or expedient to carry out the provisions of this Act.

Sec. 11. The Commission shall, prior to the issuance of any bonds under this Act, prepare and submit to the Governor for his approval, preliminary plans, showing the proposed location of the route, or routes, of the particular toll highways for which the bonds are to be issued, which said plans shall designate the approximate point of the commencement and the termination of said route, or routes, and shall also designate the municipalities to be afforded reasonable connections therewith, and served thereby. The Commission shall also, at the same time, submit to the Governor, for his approval preliminary estimates of the cost of the construction of the said toll highway, shown on said preliminary plans. If the Governor shall approve the said preliminary plans and the estimate of the cost thereof, or shall fail to disapprove such plans and estimates within 30 days after receipt thereof, the Commission shall, thereupon, provide by resolution for the issuance of bonds as hereinafter provided.

Sec. 12. The Attorney General of the State of Illinois, shall be ex officio attorney for the said Commission and he shall be its legal adviser and legal representative. In addition to the specific duties imposed upon the said Attorney General, under the provision of this Act, it shall be his further duty to act as attorney for the Commission in all of its transactions, and to represent the Commission in all of its litigation, and to examine and approve all contracts, leases, bonds or other undertakings or obligations entered into by the Commission, as to their form and constitutionality prior to their execution and delivery.

Sec. 13. All contracts let for the construction of any work authorized to be done under the provisions of this

Act, where the amount thereof is in excess of the sum of $1,000, shall be let to the lowest responsible bidder, or bidders, on open, competitive bidding after public advertisement made at least fifteen days prior to the opening of bids, in a newspaper of general circulation published in each of the seven largest cities of the State, as determined by the last preceding Federal census, in such manner and at such intervals, as may be prescribed by the Commission. The successful bidders for such work shall enter into contracts furnished and prescribed by the Commission. Such contracts shall contain a provision that such successful bidder shall indemnify and save harmless the State of Illinois for any accidental injuries or damages arising out of his negligence in the performance of such contract, and shall, and in addition, execute and give bonds, payable to the Commission, with a corporate surety authorized to do business under the laws of the State of Illinois, equal to at least fifty per cent of the contract price, one conditioned upon faithful performance of the contract and the other for the payment of all labor furnished and materials supplied in the prosecution of the contracted work.

Sec. 14. The Commission shall have power, by resolution, to issue and sell bonds from time to time in its discretion to finance, in whole or in part, the cost of the acquisition, purchase, construction, reconstruction, improvement, relocation, alteration or extension of any toll highway and the expenses incident to the exercise of the power conferred upon the Commission, in relation to the construction of a toll highway. All bonds issued under the provisions of this Act shall be issued in the name of the Commission and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the laws of the State of Illinois. Such

bonds, and the interest thereon, shall be payable from revenues derived from the operation of any one or more of the toll highways owned or operated by the Commission. No bond issued by the Commission, or any interest thereon, shall be an obligation of the State of Illinois. Such bonds shall be issued in a separate series for each toll highway and bonds in each series shall be numbered consecutively. All such bonds shall bear interest at not more than 5% per annum. The interest thereon shall be payable semi-annually, and the said bonds shall mature in not more than forty years from their date, or dates, and may be redeemable prior to maturity with or without premium at the option of the Commission, under such terms and conditions as the Commission shall fix by the resolution authorizing the issuance of such bonds. The Commission shall have the power to determine the form of such bonds, including interest coupons to be attached thereto, which bonds shall be signed by the chairman of the Commission and attested to by the secretary, under the seal of the Commission. The coupons attached thereto shall bear the facsimile signature of the said chairman and secretary of the Commission, provided, however, that each bond shall bear on its face, printed in bold type, the following words, to-wit: "Neither the principal nor interest of this bond is an obligation of the State of Illinois," and there shall also appear on the face of said bonds, printed in the same manner, the following words, to-wit: "Both the principal, interest and premium if any of this bond and the series of which it forms a part are payable out of the revenues derived from the operation of the toll highways of the Commission for which this bond has been issued." In case any of the officers whose signature appears on the bonds or coupons shall cease to be officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the

same as if they had remained in office until such delivery. The Commission shall fix the denomination, or denominations, of said bonds, the principal and interest of which shall be payable at a place within the State of Illinois to be determined by the Commission, and printed on said bond and shall be payable in lawful money of the United States. The Commission may provide for the registration of such bonds in the name of the owner as to the principal alone, or as to both principal and interest under such terms and conditions as the Commission may determine, and shall sell such bonds in such manner as it may determine. Bonds issued to bear interest at the rate of 5% per annum, shall be sold for not less than par and accrued interest; provided, however, that the selling price of bonds bearing less than 5% per annum shall be such that the interest cost to the Commission of the money received from the bond sale shall not exceed 5% annually computed to maturity according to standard tables of bond values. Such bonds shall be sold for cash. The Commission may enter into trust agreements to secure the payment of bonds issued hereunder. The proceeds from the sale of said bonds shall be paid to the Treasurer of the State of Illinois as ex-officio custodian. If the proceeds from the sale of the bonds issued for the construction of any toll highway authorized to be constructed under the provisions of this Act, shall exceed the cost thereof, the surplus from the sale of such bonds shall be paid into the fund hereinafter provided for principal and interest of such bonds. The Commission shall have the right to use such fund for the payment of principal and interest of such bonds, or for the purchase of outstanding bonds at such times and in such manner as may be provided by the bond resolution, but not in excess of the price, if any, at which such bonds shall in the same year be redeemable,

and all bonds redeemed or purchased in accordance therewith shall forthwith be cancelled and shall not be used again. Prior to the preparation of definitive bonds the Commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. No commissioner or officer of the Commission, executing the bonds, shall be liable personally on the bonds by reason of the issuance thereof. Any resolution authorizing the issuance of the bonds may include provision for the issuance of additional bonds for the completion or improvement of the toll highway or toll highways on a parity with the bonds originally issued thereunder and shall be valid only upon approval by the Governor. All other resolutions of the Commission to carry such approved resolution into effect, to provide for the sale and delivery of the bonds for the construction of the toll highway or toll highways intended to be constructed out of the proceeds of said bonds, for letting of contracts for the construction of such toll highway or toll highways and the acquisition of real and personal property deemed by the Commission necessary or convenient for the construction thereof shall not require the approval of the Governor or of any other department, division, commission, bureau, board or other agency of the state.

The holder or holders of any bonds or any coupons issued by the Commission may bring suits at law or proceedings in equity to compel the observance by the Commission or by any of its officers, agents, or employees of any contract or covenant made by the Commission with the holders of such bonds or coupons and to compel the Commission and any of its officers, agents or employes to perform any duties required to be performed for the benefit of the holders of such bonds or coupons by the provi-

sions of the resolution authorizing their issuance or by this Act, or to enjoin the Commission and any of its officers, agents or employes from taking any action in conflict with such contract or covenant.

Sec. 15. The Commission shall fix and revise from time to time, tolls or charges or rates for the privilege of using the toll highways constructed pursuant to the authority of this Act. Such tolls shall be so fixed and adjusted as to provide a fund at least sufficient with other revenues of the Commission, if any, to pay, (a) the cost of maintaining, repairing, regulating and operating the toll highway, and (b) the bonds and interest thereof and all sinking fund requirements and other requirements provided by resolution authorizing the issuance of the bonds as they shall become due. The tolls, and all other revenues derived from the operation of the said toll highways, except such part thereof as may be required to pay the cost of maintaining, repairing and operating the toll highway, and to provide such reserve therefor as may be provided by resolution authorizing the issuance of the bonds shall be set aside at such regular intervals as may be provided in such resolution in a sinking fund or reserve fund, as is hereinafter provided, which fund is hereby pledged to and charged with the payment of, (1) the interest upon such bonds as such interest shall fall due, (2) the principal of the bonds, as the same shall fall due, and (3) the necessary fiscal agency charges for paying principal and interest. The use and disposition of such sinking or reserve fund shall be subject to such regulation as may be provided in the resolution authorizing the issuance of the bonds. Subject to the provisions of the resolution authorizing the issuance of bonds any moneys in such sinking fund in excess of an amount equal to one year's interest on the bonds then outstanding may be applied to the pur-

chase or redemption of bonds. All such bonds so redeemed or purchase shall forthwith be cancelled and shall not again be issued.

Sec. 16. The Commission is hereby authorized to provide by resolution for the issuance of refunding bonds of the Commission for the purpose of refunding any revenue bonds issued under the provisions of this Act, and then outstanding. The issuance of such refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the Commission in respect to the same, shall be governed by the foregoing provisions of this Act, in so far as the same may be applicable, and by the following provisions: (a) No Commission refunding bonds shall be delivered, unless delivered in exchange for Commission revenue bonds to be refunded thereby, except in the amount necessary to provide for the payment of matured or redeemable Commission revenue bonds, or revenue bonds maturing or redeemable within three months, (b) no revenue refunding bonds shall be issued unless to refund Commission revenue bonds which have matured, or will mature, within three months or unless the interest rate of the Commission revenue refunding bonds shall be at least one-fourth (¼) of one per centum less than the interest rate borne by the Commission revenue bonds to be refunded.

Sec. 17. When all bonds and interest thereon shall have been paid, or a sufficient amount for the payment of all bonds and interest due or accrued thereon shall have been set aside in trust for the benefit of the bondholders and shall continue to be held for that purpose, the said toll highway, any connecting tunnels and bridges, approaches or other appurtenances to said toll highway, shall become a part of the system of the State highways of the State of Illinois, and be maintained and operated free of tolls.

When all of the obligations of the Commission have been paid, or a reserve for the payment therefor has been provided, as is required herein, the Commission shall be dissolved and all funds of the Commission not required for the payment of bonds, interest, machinery, equipment, property or other obligations of the Commission shall be paid to the State Treasurer of the State of Illinois.

Sec. 18. All property belonging to the Commission, and the said toll highways, shall be exempt from taxation.

Sec. 19. The Commission shall file with the Governor, prior to February 1st of each year, a written statement and report covering its activities for the preceding calendar year. It shall also be the duty of the Auditor of the State of Illinois, semi-annually to audit the books and records of the said Commission and to file a certified copy of such audit with the Governor and with the Secretary of State, which audits, when so filed, shall be open to the public for inspection.

Sec. 20. The gross total income derived from the sale of bonds, including receipts and income derived from tolls, licenses, gifts, donations, concessions, fees, rentals, and all other revenues from whatever source derived, shall within three days after receipt thereof, be paid to the Treasurer of the State of Illinois, and held by him as a special fund known as The Illinois State Toll Highway Fund. The State Treasurer shall be ex officio custodian of such special fund, which fund shall be held and disbursed for the purposes provided herein upon the order of the Commission. Said special fund shall be disbursed in the manner now provided, or which may by law be hereafter provided, for the disbursement of State funds. The interest accruing on said special fund shall be computed and added to the principal thereof every six

months. In addition to the special audits prescribed by this Act, the said fund shall also be subject to audit in the same manner as is now, or may hereafter be, provided for the audit of State funds and accounts. The said special fund shall be protected by a corporate surety bond, executed by the Treasurer, with a surety authorized to do business under the laws of the State of Illinois. The amount of said bond shall be fixed by resolution of the Commission, approved by the Governor, and may be increased or diminished at any time. The premiums on said bond shall be payable from the funds of the Commission. The bond shall be subject to the approval of the Governor and the Attorney General of the State of Illinois, and when so approved, shall be filed in the office of the Secretary of State. Said special fund shall be considered always appropriated for the purposes of disbursements, as provided in this Act, and shall be paid out and disbursed only as provided herein, and shall not, at any time, be appropriated or diverted to any other use or purpose.

Sec. 21. The Commission shall have no power to levy taxes, or to pledge any of its property, other than money derived from income, for the payments of any of its debts or obligations.

Sec. 22. Any person who violates any resolution, rule or regulation, adopted or promulgated by the Commission, pursuant to Section 8, paragraph (b) of this Act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than $25, nor more than $500.

Sec. 23. Any person who shall use any spurious or counterfeit tickets, coupons or tokens in payment of any toll required to be paid by the Commission under the provisions of this Act, or who shall attempt to use the high-

way without payment of the tolls prescribed by the Commission, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $5, nor more than $100, for each such offense. Each day any toll highway is used by any person in violation of this Act shall constitute a separate offense.

Sec. 24. No officer or commissioner of the Commission shall be interested, directly or indirectly, in any contract, agreement, lease, work or business of the Commission, or in the sale of any article whenever the expense, price or consideration of the contract, agreement, lease, work, business or sale is paid by the Commission. No officer of the Commission shall be interested, directly or indirectly, in the purchase, sale or lease of any property which (1) belongs to the Commission, (2) is sold, leased or any interest therein is acquired by the Commission, or (3) is sold by virtue of legal process at the suit of the Commission.

Sec. 25. Every officer or commissioner of the Commission who is guilty of a palpable omission of duty, or who is guilty of wilful and corrupt oppression, malconduct, or misfeasance in office in discharge of the duties of his office shall be liable to indictment in any court of competent jurisdiction and, upon conviction, shall be fined not exceeding the sum of $5,000, or imprisoned in the county jail not exceeding one year, or be both so fined and imprisoned. The court in which such conviction is had shall enter an order removing the convicted officer from office.

Sec. 26. Counties, cities, villages, incorporated towns, and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan

associations, investment companies, insurance associations and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or refunding bonds issued by the Commission. It is the purpose of this section to authorize the investment in such bonds, or refunding bonds, of all sinking, insurance, retirement, compensation, pension and trust funds, whether owned or controlled by private or public persons or officers; provided, however, that nothing contained in this section may be construed as relieving any officer, person, firm or corporation from any duty of exercising reasonable care in selecting securities.

Sec. 27. The State of Illinois hereby consents to suits against the Commission solely as in this section provided:

(a) The holder or holders of any bonds or coupons issued by the Commission may bring suits at law or proceedings in equity to compel the observance by the Commission or by any of its officers, agents, or employees of any contract or covenant made by the Commission with the holders of such bonds or coupons, and to compel the Commission and any of its officers, agents or employees, to perform any duties required to be performed for the benefit of the holders of said bonds or coupons by the provisions of the resolution authorizing their issuance, or by this Act, or to enjoin the Commission and any of its officers, agents or employees from taking any action in conflict with such contract or covenant.

(b) Any person or persons may bring suit at law to recover damages for injury to his person or property caused by any act of the Commission or by any act of any of its officers, agents or employees done under its direction.

Sec. 28. All determinations made by the Commission in the exercise of its discretionary powers with the approval of the Governor, if such approval is expressly required by the provisions of this Act, including, without limitation, with reference to the location and terminal points of any toll highway, or section thereof, constructed by it, the materials to be used in its construction, and the plans and specifications thereof, the tolls to be charged for the use thereof, and the letting of contracts for the construction of toll highways or any part thereof, or the sale of bonds to provide funds for the payment of the cost thereof, shall be conclusive and shall not be subject to review by the courts or by any administrative agency of the State.

Sec. 29. The provisions of this Act are severable and if any of its provisions shall be held to be unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Sec. 30. "An Act in relation to the construction, operation, regulation and maintenance of a system of superhighways and to create The Illinois State Superhighway Commission, and to define its powers and duties", approved July 9, 1943, is repealed.

THE OPINIONS BELOW.

Opinion of the United States District Court, Northern District of Illinois, Eastern Division.

In Equity No. 54 C 1895
William H. Combs, et. al.
vs.
The Illinois State Toll Highway Commission, et al.

Before Schnackenberg, *Circuit Judge* and Igoe and Perry, *District Judges.*

OPINION ON MOTION TO DISMISS COMPLAINT.

The motion to dismiss presents to the Court the question whether the complaint states a cause of action. We are required to assume as correct the facts set out in the complaint, and the reasonable inferences to be drawn therefrom.

On this record we have come to the conclusion that the motion to dismiss must be overruled.

We feel that it is the law that the Illinois State Toll Highway Commission can be sued.

We also believe that, even in the absence of bad faith, fraud, corruption, manifest oppression or a clear abuse of discretion, the Legislature cannot delegate to a commission the power to select the routes and termini of toll highways, and go further and make the commission's determination thereof conclusive and not subject to re-

view. This is especially true where no provision is made by the Act for public hearings at any level, administrative or judicial.

While the right to exercise discretion may be vested under certain circumstances in the commission, yet the record before us does not reveal by what method or upon what facts the commission made its determination, if any, as to locations of routes and termini.

January 27, 1955

OPINION ON THE MERITS.

Before Elmer J. Schnackenberg, Judge of the United States Court of Appeals for the Seventh Circuit, and Michael L. Igoe and Joseph Samuel Perry, *District Judges.*

Schnackenberg, *Circuit Judge.* This action has been heard pursuant to 28 U.S.C.A., §2281 and §2284.

Plaintiffs, who are respectively the owners of real estate situated in Cook, DuPage and Lake Counties, Illinois, by their complaint seek an injunction restraining the defendants, The Illinois State Toll Highway Commission and its members, and the attorney general of the state of Illinois, from taking any action by virtue of the Illinois Toll Highways act, approved July 13, 1953[1], affecting the properties of plaintiffs and other persons similarly situated, upon the ground that said act is unconstitutional in that it permits the taking of said property without due process of law, in violation of section 1 of the fourteenth amendment to the constitution of the United States. The act provides for the construction, operation, regulation and maintenance of a system of toll

[1] Secs. 314a26 to 314a54, inclusive, Chap. 121, Ill. Rev. Stat. 1953.

highways, creates the commission, defendant herein, and defines its powers and duties.

The act provides, *inter alia,* that the commission shall prepare and submit to the governor of Illinois for his approval, preliminary plans showing the proposed location of the routes of the particular toll highway for which bonds are to be issued, designating the approximate point of the commencement and the termination of said routes and the municipalities to be afforded reasonable connections therewith and served thereby, and estimates of the cost thereof. It also provides that if the governor shall either approve or fail to disapprove such plans and estimates within thirty days after receipt thereof, the commission shall thereupon provide by resolution for the issuance of bonds as in said act provided. The complaint charges that defendants are about to construct what is to be known as the Tri-State toll road over and across the properties of plaintiffs and other persons, to acquire portions of said properties by eminent domain proceedings, and are about to issue and sell bonds to be paid out of revenues derived from such toll roads, which averments are substantially admitted by defendants' answer.

At a hearing upon the complaint and an answer thereto, the evidence offered by both parties was received.

The first ground for plaintiffs' contention that their constitutional rights will be violated is that no public hearings were either required by the act to be held or shown by the evidence to have been held by the commission prior to its determination of the locations or termini of the proposed routes for the Tri-State toll road.

It is clear that the act makes no express provision for public hearings. The evidence adduced shows that nu-

merous complaints on this subject were received by the commission and replies thereto were made in various ways. It also shows that on several occasions some complainants and critics of the routes being considered by the commission were, when present, permitted to express their views either to the commission itself or to various staff members thereof, who reported these interviews to the commission. Persons who called at the office of the commission in Chicago, requesting information about the proposed routes, were given access to detailed maps which were there available. The evidence submitted by the respective parties forms a voluminous part of the record before us. It fails to show that the customary requirements for the calling of a public hearing, including the giving of public notice thereof, were ever complied with by the commission or, in fact, that any effort was ever made toward such compliance. Moreover what transpired on the few occasions when various members of the public were permitted to be present falls short of the essential elements of a public hearing. Those occasions were used more for a presentation by the commission than a reception by it of the views of those members of the public who were present. We do find, therefore, that there were no public hearings held.

Members of the commission and of its staff appeared at various meetings of organizations and explained the purposes of the commission. While the complaint charges that the defendants have kept secret the precise lines of a survey of the proposed new route, we find no evidence of any secretiveness in this respect.

The evidence shows that the proposed highway is to extend from the Indiana state line to the Wisconsin state line and traverse the area in Illinois lying between those

state lines. It also shows that this highway would terminate at the Indiana state line at a point several miles south of where a toll highway about to be constructed by the state of Indiana will reach the same state line. The evidence fails to show that the terminus of the proposed highway at the Wisconsin state line will connect with any presently planned toll highway in Wisconsin.

The evidence further shows that the highway in question as it passes west of the city of Chicago will be several miles further from the Chicago city limits than would be a suggested route located on what is known as the River Road, and that the commission has taken the position that the route it suggests is feasible and would be much less expensive to acquire than the River Road route, which decision they base upon the advice of their engineers, appraisers and lawyers.

Section 28 of the act provides:

> Sec. 28. All determinations made by the Commission in the exercise of its discretionary powers with the approval of the Governor, if such approval is expressly required by the provisions of this Act, including, without limitation, with reference to the location and terminal points of any toll highway, or section thereof, constructed by it, the materials to be used in its construction, and the plans and specifications thereof, the tolls to be charged for the use thereof, and the letting of contracts for the construction of toll highways or any part thereof, or the sale of bonds to provide funds for the payment of the cost thereof, shall be conclusive and shall not be subject to review by the courts or by any administrative agency of the State.

The Illinois Supreme Court considered this act and stated that it could find no valid constitutional objection to it. *People* v. *Toll Highway Commission*, 3 Ill. 2d

218. Among other things, it held (at 232) that the functions delegated to this commission are administrative and ministerial, and are not legislative in their nature, and, that the delegation of such power to the commission by the legislature is valid. That determination cannot be questioned in this proceeding. *Ohio* v. *Akron Park District,* 281 U.S. 74 at 79, and *Neblett* v. *Carpenter,* 305 U.S. 237, at 302. In the same case that Illinois court also held (at 233) that the provisions of section 28 making the commission's determinations in the area of its discretionary powers conclusive and not subject to review, are limited to discretionary matters and that recourse to the courts is not denied where bad faith, fraud, corruption, manifest oppression or a clear abuse of discretion enters into the commission's determinations, and that the presence of any of these conditions will give ready access to the courts. It further held that the determinations of the commission can constitutionally be made conclusive so long as none of the above evils is present. In the case at bar it is admitted that none of these evils is present. Whether or not the act offends against the constitution of the state of Illinois is not for us to decide. That function is exclusively within the jurisdiction of the state courts. Whether or not the legislature was wise in passing the law or in enacting certain of its provisions is not for us to decide.

In view of the act's lack of requirement for public hearings and the act's provision that the commission's determinations are to be conclusive, as well as the relevant facts which we have herein set forth, would the threatened action of the commission against the property rights of plaintiffs be a violation of the due process clause of the fourteenth amendment to the constitution of the United States? That is the question before us.

Fortunately the United States Supreme Court has already, in a similar case, indicated the answer to that question. In *Rindge Co.* v. *Los Angeles,* 262 U.S. 700, it appears that the board of supervisors of Los Angeles county, without notice to the owners of certain ranch property, adopted resolutions declaring public interest and necessity required the construction of two highways and directed that condemnation proceedings be instituted for such purpose. One of the proposed highways, known as the "main road," was to commence at the eastern boundary of the ranch, where it connected with and formed a continuation of a much traveled public highway running along the shore of the Pacific Ocean, and was to extend lengthwise through the ranch in a westerly direction to the Ventura county line, where it was to terminate within the boundaries of the ranch. The other road was to be a branch of the main road, extending to the northern boundary of the ranch, where it was to terminate. There were no connecting public roads either at the western termination of the main road or the northern termination of the branch road. Condemnation proceedings were instituted and were resisted by the ranch owners, who denied the county's right to condemn.

The act, under which the board was acting, provided that a resolution such as that which was passed, should be conclusive evidence of the public necessity for such improvement, that such improvement was necessary therefor, and that such improvement was located in the manner most compatible with the greatest public good and the least private injury.

The court struck out a special defense of the defendants which alleged that the main road would furnish no way of necessity or convenience for public use or travel.

The ranch owners appealed from a judgment condemning their property for these highways and fixing their compensation and damages. The case finally reached the Supreme Court of the United States. That court, at 706, said:

"The ranch owners concede that a genuine highway, in fact adapted as a way of convenience or necessity for public use and travel, is a public use. Their real contention is that these particular roads, while called highways, are 'highways' in name merely, that is, that they are shams under the name of public improvements, which cannot, in fact, furnish ways of convenience or necessity to the traveling public. This argument is based upon the fact that they extend through the ranch alone, the main road terminating within it boundaries, and connect with no other public roads at their western and northern ends. These roads will, however, be open to the general public to such extent as it can and may use them. The people to the eastward in Santa Monica, Los Angeles and other cities will have access to them and to the people living on the ranch through the connecting road from Santa Monica. The people living on the ranch will have egress over them. The people living north of the terminus of the crossroad, who now have no adequate outlet, will have access to it through private roads and ways and may then travel over these two roads to Los Angeles and other cities for marketing produce and other purposes; and the people in these cities will have reciprocal access to them for purposes of trade and otherwise. It is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in any improvement in order to constitute a public use. *Fallbrook Irrigation District* v. *Bradley, supra,* p. 161. In like manner, if Ventura County should hereafter extend the main road to the western end of the ranch the people living beyond it, who now have no practical outlet, would be furnished a

similar means of egress, with reciprocal ingress to them by the people living in the cities to the east. A highway can be legally laid out terminating at a state line even though there be no connecting highway in the adjoining State and no definite official action has been taken to establish such connecting highway; otherwise great embarrassment and difficulty would be experienced in establishing highways across state lines. *Rice* v. *Rindge,* 53 N. H. 530, 531. So, as to county highways. Public road systems, it is manifest, must frequently be constructed in instalments, especially where adjoining counties are involved. In determining whether the taking of property is necessary for public use not only the present demands of the public, but those which may be fairly anticipated in the future may be considered. *Central Pacific Railway* v. *Feldman,* 152 Cal. 303, 309."

And, at page 708, the court said:

"We necessarily accept, as a matter of state law, the holding of the District Court of Appeal that the proviso to § 1241 of the Code made the resolutions of the Board of Supervisors conclusive evidence as to the necessity of taking these particular highways and the other matters therein specified. So construed it was held by that court not to be objectionable to any provision of the State or Federal Constitutions. By this we are controlled so far as the provisions of the state constitution are concerned. *Fallbrook Irrigation District* v. *Bradley, supra,* p. 155; *Georgia Railway* v. *Decatur, ante,* 432. And so construed this statute is not in conflict with the Fourteenth Amendment, either because it fails to provide for a hearing by the landowners before such resolution is adopted, or otherwise. The necessity for appropriating private property for public use is not a judicial question. This power resides in the legislature, and may either be exercised by the legisla-

Note: **Fallbrook Irrigation District v. Bradley is reported in 164 U. S. 112, 41 L. Ed. 369.**

ture or delegated by it to public officers. 'Where the intended use is public, the necessity and expediency of the taking may be determined by such agency and in such mode as the State may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Fourteenth Amendment.' *Bragg* v. *Weaver,* 251 U.S. 57, 58. 'That the necessity and expediency of taking property for public use is a legislative and not a judicial question is not open to discussion. . . . Neither is it any longer open to question in this Court that the legislature may confer upon a municipality the authority to determine such necessity for itself. . . . The question is purely political, does not require a hearing, and is not the subject of judicial inquiry.' *Joslin Mfg. Co.* v. *Providence, ante,* 688."

The conclusion of the court, (at 710) is as follows:

> "We therefore conclude that the property of the ranch owners has been taken for highways constituting a public use authorized by law, and upon a public necessity for the taking duly established, and that they have not been deprived of their property in violation of the Fourteenth Amendment."

As far as we have been able to determine, the above quotations from *Rindge Co.* v. *Los Angeles* have never been repudiated or limited by the United States Supreme Court. That decision is controlling here.

Even if, as plaintiffs claim, defendants, in exercising their delegated discretion in locating the routes and termini of toll roads, have made mistakes, in failing to have the proposed Illinois toll road meet a similar Indiana road at the state line, or otherwise, that fact is not a sufficient reason for a federal court to assume jurisdiction under the due process clause of the United States

constitution. These public officials are human beings. To err is human. On the other hand, if they are guilty of improper action due, not merely to error of judgment, but to bad faith, fraud, corruption, manifest oppression or a clear abuse of discretion, the state courts are open to those whose rights are threatened (*People* v. *Toll Highway Commission,* 3 Ill. 2nd 218.) Therefore, in such circumstances also, no resort to the federal courts is permitted. In neither of these classes of cases is a federal question involved.

For the reasons above set forth, the prayer for an injunction is denied and the complaint is dismissed for want of equity. Counsel for defendants will present a decree accordingly.

MICHAEL L. IGOE,
Judge of the District Court

JOSEPH SAMUEL PERRY,
Judge of the District Court

ELMER J. SCHNACKENBERG,
Judge of the United States Court of Appeals

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE DISMISSING COMPLAINT FOR WANT OF EQUITY.

This matter coming on to be heard before a Three Judge Court convened pursuant to 28 U.S.C., §2281 and §2284, and upon the complaint filed by plaintiffs and the joint and several answer of the defendants, and the Court having heard evidence presented in open court and having considered all such evidence heretofore taken, as well as all exhibits offered and received in evidence, and the matter having been argued by counsel, and the Court, having heard the statements and arguments of counsel and being fully advised in the premises, makes the following findings of fact, conclusions of law and decree:

Findings of Fact.

The Court Finds that:

(1) This is an action in equity, brought by plaintiffs pursuant to the provisions of Sections 2281 and 2284 of Title 28 U.S.C., seeking a preliminary and permanent injunction to enjoin The Illinois State Toll Highway Commission, Evan Howell, William Prince and Orville Taylor and E. A. Rosenstone, Director of the Department of Public Works and Buildings of the State of Illinois ex officio, constituting (with the Governor of the State of Illinois ex officio) The Illinois State Toll Highway Commission, and Latham Castle, the Attorney General of the State of Illinois, from taking any action under or pursuant to the provisions of the Illinois Toll Highways Act of July 13, 1953, which might affect or involve the properties of plaintiffs and other persons similarly situated, and also praying that the said Act be

declared unconstitutional and void on the ground that it permits and provides for the taking of property of plaintiffs and others in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(2) The plaintiffs are the owners of the premises described in the complaint, part or all of which would be taken by eminent domain proceedings under the statutes of the State of Illinois, in the event the defendants carry out their purpose to construct a public highway to be known as the Tri-State Toll Road.

(3) The Illinois State Toll Highway Commission was created by an act approved July 13, 1953, in relation to the construction, operation, regulation and maintenance of the system of toll highways and to create The Illinois State Toll Highway Commission, and to define its powers and duties, hereinafter sometimes referred to as the Act.

(4) The defendants, Evan Howell, William Prince and Orville Taylor, are acting as members of said Commission, having been duly appointed by the Governor of the State of Illinois pursuant to the provisions of said Act. The defendant, E. A. Rosenstone, is the Director of the Department of Public Works and Buildings of the State of Illinois, and by the terms of said Act ex officio a member of said Commission. The Governor of the State of Illinois is also a member ex officio. Defendant, Latham Castle, is the duly elected, qualified and acting Attorney General of Illinois.

(5) From and after February 1, 1954, the Commission and its staff made preliminary preparations for the location, laying out and eventual construction of the so-called Tri-State Highway. No construction has yet taken place nor have any condemnation proceedings been started

against the property of plaintiffs or others in connection with the construction of such proposed Highway; but the route of said proposed Highway has been determined, subject to the right to make changes.

(6) In connection with such preparation, the Commission, or the members of its staff, have held not fewer than 117 conferences, hearings and meetings with state and local public officials, particularly those having to do with highway construction and maintenance, and with property owners whose land might be taken in part or in whole by the construction of such Highway, and with others; that at such conferences, meeting and hearings, the Commission or its staff heard any and all protestations or representations made by any such individuals or groups; that said 117 meetings, hearings and conferences included fifty-one with state and local public officials, twenty-nine with officers or employees of public utilities, whose property might be affected, and thirty-seven with property owners, or groups of such owners or their representatives.

(7) In addition there were over five thousand interviews and conversations, in person and by telephone, between members of the Commission and members of its staff on the one side and property owners and members of the general public on the other, touching the location and termini of routes proposed to be constructed.

(8) Such conferences, meetings and hearings were not held in accordance with any published or personally served notice; there is no provision in the Illinois statute for any such notice or for a hearing on the location of any proposed road; at such conferences, meetings and hearings, no verbatim record was made of statements or testimony, no witnesses were sworn and no examination

or cross-examination as formally conducted in a court was made.

(9) Such meetings, conferences and hearings were not public hearings.

(10) As a result of such conferences, meetings and hearings, eleven major relocations were made in the highways proposed to be built, seven of which major relocations related to the proposed Tri-State toll road, and eight other major changes were under consideration by the Commission at the time of the institution of this suit.

(11) Members of the Commission and its staff appeared at various meetings of organizations and explained the purposes and preliminary plans of the proposed toll highways.

(12) While the complaint charges that the defendants have kept secret the precise lines of a survey of the proposed Tri-State Route, there is no evidence of any secretiveness in this respect.

(13) Much publicity was given to the actions and proposed plans of the Commission; over 1800 newspaper articles appeared in the public press and newspapers published in the State of Illinois in regard thereto.

(14) The Commission's action in selecting the location for the Tri-State Route was based on extensive studies and the recommendations of engineers whom the Commission deemed qualified and took into consideration the matters raised at the numerous conferences, hearings and meetings with public officials, property owners and the public.

(15) The Supreme Court of Illinois considered said Act and found it to be without constitutional objection in

the case of *People* v. *Toll Highway Commission*, 3 Ill. 2d 218, holding, among other things, that the delegation of power to the Commission by the Legislature is valid, and that there is no violation of the due process clause of the State Constitution. It was also held in said decision that the Commission's determination in the area of its discretionary powers is conclusive and not subject to review, except that recourse to the courts is not denied where bad faith, fraud, corruption, manifest oppression or a clear abuse of discretion enters into the Commission's determinations, and that the presence of any of these conditions will give ready access to the courts. The Court further held that the determinations of the Commission can constitutionally be made conclusive so long as none of such evils are present.

(16) It is admitted by plaintiffs that none of the evils referred to in the preceding paragraph are present in this case.

(17) The laying out and construction of said Tri-State Highway is a public purpose and use.

(18) The Constitution and statutes of the State of Illinois provide for just compensation for private property taken or damages for public use, and for a judicial hearing to determine the amount of such compensation.

(19) All of the findings of fact by the Court contained in its final opinion are incorporated as findings of fact herein.

(20) The amount in controversy exceeds the sum of $3,000.00, exclusive of interest and costs.

(21) The Court has jurisdiction of the subject matter hereof and all of the parties hereto.

Conclusions of Law.

(1) Plaintiffs' appliciation for a permanent injunction should be denied, and the complaint should be dismissed for want of equity at plaintiffs' costs.

(2) The decision of the highest court of Illinois, that the delegation of power by the State Legislature to the defendant Commission is valid, is binding upon the Federal Courts, and that determination cannot be questioned in this proceeding.

(3) The determination of that Court that the Act does not offend against the Constitution of the State of Illinois is binding upon this Court and all other Federal courts.

(4) This act is not on conflict with the Fourteenth Amendment for failing to grant a hearing to property owners (whose land is to be acquired by eminent domain proceedings), before the instrumentality or agency of the State determines the necessity for and the location of the public highway, or for failing to provide a judicial review of such determination of necessity and location, except in case of bad faith, fraud, corruption, manifest oppression or a clear abuse of discretion.

(5) The location of roads giving rise to the necessity for subsequently appropriating private property for a public use is not a judicial question. This power resides in the Legislature and may either be exercised by the Legislature or delegated by it to public officers or agencies. Where the intended use is public, the necessity and expediency of the taking may be determined by such public officers or agencies and in such mode as the State may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon

s not essential to due process in the sense of the Four-eenth Amendment.

(6) The question of the necessity and expediency of he taking of property for public use and of the location f a public highway is a legislative and not a judicial uestion. That qestion is purely political, does not require hearing and is not the subject of judicial inquiry.

(7) There is no violation of the Fourteenth Amend-ment of the Constitution of the United States by the Act tself or by the actions of the defendant Commission hereunder.

(8) All of the conclusions of law by the Court con-tained in its final opinion are incorporated as conclusions f law herein.

Decree.

Therefore, It Is Hereby Ordered, Adjudged and De-creed:

(1) All the findings of fact and conclusions of law hereinabove set forth shall be considered as incorporated in this Decree.

(2) All of the findings of fact and conclusions of law of the Court contained in its final opinion filed herein shall be considered as incorporated in this Decree.

(3) The application of plaintiffs for a permanent in-junction is denied.

(4) The complaint is dismissed for want of equity, at plaintiffs' costs.

Enter:

/s/ ELMER J. SCHNACKENBERG,
Judge of the United States Court of Appeals.

/s/ MICHAEL L. IGOE,
Judge of the United States District Court.

/s/ JOSEPH SAM PERRY,
Judge of the United States District Court.

Dated: February 9, 1955.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

No. 742

WILLIAM H. COMBS, EDMEE S. COMBS, MELVIN T. DURLAND, ROSELLA B. DURLAND, EDWARD KOZEL, ELIZABETH KOZEL, CHESTER A. FAULKNER, ESTELL FAULKNER, MARY JANE BOLLENBACHER, RICHARD G. BOLKE, DORIS V. BOLKE, CLIFFORD R. SCHIEFELBEIN, RENELL L. SCHIEFELBEIN, HERBERT G. RHOADS, MARY G. RHOADS, GEORGE F. WILSON, WILHELMINA EUDEAN WILSON, ALBERT CARR, GENEVIEVE CARR, NELS MARTIN KIEFER, DEETA LUCILLE KIEFER, ELKER R. NIELSEN, JR., ROBERT E. NIELSEN, ELLEN N. NIELSEN, ENTERPRISE REALTY CO., a corporation, ILLINOIS CONFERENCE ASSOCIATION OF SEVENTH DAY ADVENTISTS, a religious association, ANNA A. BORG, and ELFREDA VILMA SALZMAN,

Appellants,

vs.

THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, EVAN HOWELL, WILLIAM PRINCE and ORVILLE TAYLOR, and E. A. ROSENSTONE, Director of Public Works and Buildings of the State of Illinois ex officio, constituting (with the Governor of the State of Illinois ex officio) the Illinois State Toll Highway Commission, and LATHAM CASTLE, the Attorney General of the State of Illinois,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of this Court, move that (a) the appeal herein, taken pursuant to 28 U.S.C. § 1253, from the Decree of a Three-Judge District Court, convened in the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. § 2281 and § 2284, dismissing the complaint "for want of equity," be dismissed because the appeal does not present a substantial federal question (decree reversed and remanded, with

directions to dismiss on such ground: *Norumbega Co.* v. *Bennett,* 290 U.S. 598; and *California Water Service Co.* v. *Redding,* 304 U.S. 252), or alternatively (b) the decree be affirmed, because the questions involved are so unsubstantial as not to need further argument; and as grounds for said motion, state the following:

GROUNDS FOR MOTION

1. It has repeatedly been held by this Court that due process does not require a hearing, either administrative or judicial, on the question of fixing the location and termini of a public highway.

2. The power to locate roads and fix their termini is legislative; it may constitutionally be exercised by the legislature or by any agency or municipality to which such power is delegated; it is a legislative or political and not a judicial power.

3. No person has a property right in the prospective location of a proposed highway.

4. The Constitution and eminent domain statutes of Illinois afford a judicial hearing before appellants' property can be taken. This includes the judicial power to determine whether the property is being taken for a public use.

5. That there is no unlawful delegation of legislative power in the statute involved herein has been decided by the highest court of Illinois. This decision is binding on all federal courts.

6. The case of *Rindge Co.* v. *County of Los Angeles,* 262 U.S. 700, is controlling of the issues here.

7. That the proposed highway involved is a public use has been decided by the Supreme Court of Illinois under the statute involved herein.

SOLE QUESTION PRESENTED

Is there sufficient doubt as to whether the Illinois Toll Highways Act (Ill. Rev. Stat. 1953, chap. 121, § 314(a)26 through § 314(a)54), hereinafter called the Act, violates the due process clause (Sec. 1, Fourteenth Amendment) to require notation of probable jurisdiction, printed record, briefs and oral argument?

STATEMENT

Appellants, property owners, contending that the Illinois Toll Highways Act violates Section 1 of the Fourteenth Amendment to the Constitution of the United States, instituted this suit in the District Court to have the Act declared unconstitutional and to enjoin appellees from proceeding thereunder. Appellees' motion to dismiss, on the grounds that the Court lacked jurisdiction over the subject matter and that the complaint failed to state a claim upon which relief could be granted, was denied; appellees answered the complaint; and the matter was heard by a District Court of three judges. That Court dismissed the complaint for want of equity.

The Act provides, *inter alia,* that the Commission created by it shall prepare and submit to the Governor of Illinois for his approval, preliminary plans showing the proposed location of the routes of the particular toll highway for which bonds are to be issued, designating the

approximate point of the commencement and the termination of said routes and the municipalities to be afforded reasonable connections therewith and served thereby, and estimates of the cost thereof. It also provides that if the Governor shall either approve or fail to disapprove such plans and estimates within thirty days after receipt thereof, the Commission shall thereupon provide by resolution for the issuance of bonds as in the Act provided.

The complaint charges that appellees are about to construct a public highway to be known as the Tri-State toll road over and across the properties of appellants and other persons, to acquire portions of said properties by eminent domain proceedings, and are about to issue and sell bonds to be paid out of revenues derived from toll roads.

Appellants' above mentioned contention is based on absence from the Act of any requirement that the Commission created thereby hold public hearings prior to its determination of the locations or termini of the proposed routes for the Tri-State toll road, and on the argument that no such public hearings were in fact held by the Commission.

Questions (2) and (3) stated in the jurisdictional statement as being presented on the instant appeal are absent from the complaint.

OPINION BELOW

After stating that the evidence showed that numerous complaints were received by the Commission and replies

thereto were made in various ways, that on several occasions complainants were permitted to express their views to the Commission or to members of its staff who reported the interviews to the Commission, and that persons who called at the Commission's office were given access to detailed maps, and while finding in its Findings of Fact that 117 conferences, hearings and meetings were held, as well as over 5,000 telephone calls and interviews took place, but finding in the opinion that these fell "short of the essential elements of a public hearing", the opinion below (*Combs et al* v. *The Illinois State Toll Highway Commission et al*, 128 Fed. Sup. 305) then states:

> "The Illinois Supreme Court considered this act and stated that it could find no valid constitutional objection to it. *People* v. *Toll Highway Commission*, 3 Ill. 2d 218. Among other things, it held (at 232) that the functions delegated to this commission are administrative and ministerial, and are not legislative in their nature, and, that the delegation of such power to the commission by the legislature is valid. That determination cannot be questioned in this proceeding. *Ohio* v. *Akron Park District*, 281 U.S. 74 at 79, and *Neblett* v. *Carpenter*, 305 U.S. 237, at 302. In the same case that Illinois court also held (at 233) that the provisions of section 28 making the commission's determinations in the area of its discretionary powers conclusive and not subject to review, are limited to discretionary matters and that *recourse to the courts is not denied where bad faith, fraud, corruption, manifest oppression or a clear abuse of discretion enters into the commission's determinations*, and that the presence of any of these conditions will give ready access to the courts."*

*This review of the Illinois Court's opinion shows the inaccuracy of appellants' assertions at page 7 of the jurisdictional statement.

It further held that the determinations of the commission can constitutionally be made conclusive so long as none of the above evils is present. In the case at bar it is admitted that none of these evils is present. Whether or not the act offends against the constitution of the state of Illinois is not for us to decide. That function is exclusively within the jurisdiction of the state courts. Whether or not the legislature was wise in passing the law or in enacting certain of its provisions is not for us to decide." (Emphasis supplied.)

The Court below relied upon *Rindge Company* v. *County of Los Angeles,* 262 U.S. 700, for its Decree, quoted therefrom and concluded:

"Even if, as plaintiffs claim, defendants, in exercising their delegated discretion in locating the routes and termini of toll roads, have made mistakes, in failing to have the proposed Illinois toll road meet a similar Indiana road at the state line, or otherwise, that fact is not a sufficient reason for a federal court to assume jurisdiction under the due process clause of the United States constitution. These public officials are human beings. To err is human. On the other hand, if they are guilty of improper action due, not merely to error of judgment, but to bad faith, fraud, corruption, manifest oppression or a clear abuse of discretion, the state courts are open to those whose rights are threatened. (*People* v. *Toll Highway Commission,* 3 Ill. 2d 218.) Therefore, in such circumstances also, no resort to the federal courts is permitted. In neither of these classes of cases is a federal question involved."

ARGUMENT

I.

In the *Rindge* case, 262 U.S. 700, the Board of Supervisors of Los Angeles County, without notice to the owners of certain ranch property, adopted resolutions declaring that the public interest and necessity required the construction of two highways and directing that condemnation proceedings be instituted for such purpose. One of the proposed highways, known as the "main road," was to commence at the eastern boundary of the ranch, where it connected with and formed a continuation of a much traveled public highway running along the shore of the Pacific Ocean, and was to extend lengthwise through the ranch in a westerly direction to the Ventura County line, where it was to terminate within the boundaries of the ranch. The other road was to be a branch of the main road, extending to the northern boundary of the ranch, where it was to terminate. There were no connecting public roads either at the western termination of the main road or the northern termination of the branch road. Condemnation proceedings were instituted and were resisted by the ranch owners, who denied the county's right to condemn.

The statute, under which the board was acting, provided that a resolution such as that which was passed, should be "conclusive evidence" of the public necessity for such improvement, that such improvement was necessary therefor, and that such improvement was located in the manner most compatible with the greatest public good and the least private injury.

The State Court struck out a special defense of the defendants which alleged that the main road would furnish no way of necessity or convenience for public use or travel. The ranch owners appealed from a judgment condemning their property for these highways and fixing their compensation and damages.

On writ of error, this Court affirmed against a contention of deprivation of property without due process of law in violation of Section 1 of the Fourteenth Amendment. The unanimous opinion by Justice Sanford states at page 708:

> " * * * We necessarily accept, as a matter of state law, the holding of the District Court of Appeal that the proviso to § 1241 of the Code made the resolutions of the Board of Supervisors conclusive evidence as to the necessity of taking these particular highways and the other matters therein specified. So construed it was held by that court not to be objectionable to any provision of the State or Federal Constitutions. By this we are controlled so far as the provisions of the state constitution are concerned. *Fallbrook Irrigation District* v. *Bradley, supra,* p. 155; *Georgia Railway* v. *Decatur, ante,* 432. And so construed this statute is not in conflict with the Fourteenth Amendment, either because it fails to provide for a hearing by the landowners before such resolution is adopted, or otherwise. The necessity for appropriating private property for public use is not a judicial question. This power resides in the legislature, and may either be exercised by the legislature or delegated by it to public officers. 'Where the intended use is public, the necessity and expediency of the taking may be determined by such agency and in such mode as the State

may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Fourteenth Amendment.' *Bragg* v. *Weaver,* 251 U.S. 57, 58. 'That the necessity and expediency of taking property for public use is a legislative and not a judicial question is not open to discussion. . . . Neither is it any longer open to question in this Court that the legislature may confer upon a municipality the authority to determine such necessity for itself. . . . The question is purely political, does not require a hearing, and is not the subject of judicial inquiry.' *Joslin Mfg. Co.* v. *Providence, ante,* 668. And, clearly, the fact that the resolutions are made conclusive evidence by the statute only when adopted by a two-thirds vote, and as applied to an improvement lying within the county, does not constitute an unjust or unreasonable classification."

The quotation in the *Rindge* case from *Bragg* v. *Weaver,* 251 U.S. 57, 58, that "the necessity and expediency of the taking may be determined by such agency and in such mode as the State may designate," foredooms any attempt by appellants to distinguish the instant case from the *Rindge* case, on the ground of delegation here to the creature of the legislature, whereas the delegation in the *Rindge* case was to the Board of Supervisors, probably elected officials. That conclusion is clinched by *City of Newark* v. *New Jersey Turnpike Authority,* 342 U.S. 874. There the motion to dismiss appeal from the New Jersey Supreme Court judgment, 7 N.J. 377, 81 A. 2d 705, was granted for want of a substantial Federal question. The judgment under appeal was entered on an order granting same summarily. That judgment dismissed the complaint in an action to

enjoin the New Jersey Turnpike Authority from proceeding with certain construction, under the New Jersey Turnpike Authority Act creating it and delegating to it powers with respect to constructing the turnpike. That statute presented the same due process question as is presented by the Act involved on the instant appeal.

Without regard to whether the particular case involved a determination by elected or by appointed officials, whether legislative or administrative, this Court has steadfastly adhered to the principles laid down in the *Rindge* case.

Bragg v. *Weaver,* 251 U.S. 57, 58.

North Laramie Land Co. v. *Hoffman,* 268 U.S. 276.

Georgia v. *Chattanooga,* 264 U.S. 472.

Boom Co. v. *Patterson,* 98 U.S. 403, 406.

Backus v. *Fort Street Union Depot Co.,* 169 U.S. 557, 568.

Sears v. *City of Akron,* 246 U.S. 242, 251.

Joslin Mfg. Co. v. *Providence,* 262 U.S. 668, 678.

In *Robinette* v. *Chicago Land Clearance Commission,* 115 F. Sup. 669, 672-673 (N.D. Ill. 1951), the Court stated:

> "In regard to plaintiffs' initial contention, i.e., that they should have been afforded notice, opportunity to be heard and judicial review of the finding by the administrative agency that the area is blighted and requires redevelopment, it should be noted that such administrative action is merely a preliminary step in the process of exercising the power of eminent domain. No property is taken in the proceeding, nor are the property rights of the landowners affected in any manner. The steps required to be taken precedent to the right to exercise of the

> power of eminent domain are legislative questions. The question of whether such steps have actually been taken is judicial. Further, in any condemnation suit instituted by the administrative agency, the trial court can determine whether these conditions precedent to the exercise of the right have been fulfilled. The hearing, therefore, in the suit in which it is sought to acquire property by eminent domain, gives to the property owner the right and the opportunity to be heard on all questions on which he is entitled to a hearing and fulfills all the requirements of due process of law. * * *". *Mandamus denied,* 342 U.S. 940. (*Robinette* v. *Campbell.*)

The recognition of the *Rindge* case as a continuing authority appears in a concurring opinion by Mr. Justice Frankfurter in *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, at 167.

II.

Furthermore, as to appellants' contention that this appeal presents a question of the propriety of the delegation to the Commission of legislative functions, it is sufficient to note that the Supreme Court of Illinois, in *People* v. *Illinois State Toll Highway Commission,* 3 Ill. 2d 218, 120 N.E. 2d 35, decided this question in favor of the constitutionality of the Act. This being solely a question of State law, no Federal question is presented.

Douglas v. *Noble,* 261 U.S. 165, 170.
Ohio v. *Akron Park District,* 281 U.S. 74, 79.
Pacific States Box & Basket Co. v. *White,* 296 U.S. 176, 186.
Highland Farms Dairy v. *Agnew,* 300 U.S. 608, 611-613.
Neblett v. *Carpenter,* 305 U.S. 297, 302.

Moreover, this point was not raised in the complaint or in the argument below.

III.

As to appellants' contention that this appeal raises a question of whether a State legislature may remove from judicial consideration the question whether any project undertaken by an administrative commission requiring the taking of property constitutes a public use and that this appeal also raises the question of whether the finding of fact that the Tri-State Toll Highway is a public use is supported by the evidence, the Supreme Court of Illinois, in *People* v. *Illinois State Toll Highway Commission, supra,* held that the toll highways under the Act constitute "a public use of public property for public benefit."

Further, under the law of Illinois appellants will have an opportunity in condemnation proceedings to raise the question of whether the property "is being taken for a public use." *City of Chicago* v. *Vaccarro,* 408 Ill. 587; *Forest Preserve District of Cook County* v. *Wike,* 3 Ill. 2d 49, 56.

In the condemnation proceeding, the court may in addition to awarding just compensation also determine (a) whether the petitioner has power to exercise the right; (b) whether the property is subject to the right of eminent domain; (c) *whether the property is being taken for a public use;* (d) whether the power is being abused. See the two cases last above cited.

There can be no question that the use contemplated by the Act is a public one. This Court has recognized that a turn-

pike or toll road is a public highway established by public authority and for public use, even though the use thereof can be obtained by members of the public only upon the payment of a fee.

Commissioners of Dodge County v. *Chandler,* 96 U.S. 205, 207-208.

Covington & L. Turnpike Road Co. v. *Sandford,* 164 U.S. 578.

Numerous decisions of state courts likewise recognize such a status for turnpikes and toll roads.

54 Am. Jur., Turnpikes and Toll Roads, Sec. 2, Note 11.

17 Ann. Cases. 805.

IV.

In support of their contention that the principles enunciated in the *Rindge* case are not applicable to the instant case, appellants cite cases which involve administrative determinations dealing with levies of special assessments of property for local improvement purposes or fixing of boundaries of improvement districts (*Hancock* v. *City of Muskogee,* 250 U.S. 454; *Browning* v. *Hooper,* 269 U.S. 396; *Fallbrook Irrigation District* v. *Bradley,* 164 U.S. 112; *Embree* v. *Kansas City Road District,* 240 U.S. 242; *Chesebro* v. *Los Angeles County Flood Control District,* 306 U.S. 459), orders fixing public utility rates or the value of public utility property (*Chicago, Milwaukee and St. Paul R. R.* v. *Minnesota,* 134 U.S. 418; *Ex Parte Young,*

209 U.S. 123; *Oklahoma Operating Co.* v. *Love,* 252 U.S. 331), orders requiring carriers to establish switch or track connections (*Washington ex rel. Oregon R. R. & Navigation Co.* v. *Fairchild,* 224 U.S. 510) and orders directing the elimination of grade crossings (*Lehigh Valley R. Co.* v. *Commission,* 278 U.S. 24; *Southern Ry. Co.* v. *Virginia ex rel. State Highway Commission,* 290 U.S. 190). None of these cases involves, as does the instant case, a situation where the persons affected will have notice and a full and adequate opportunity to be heard in condemnation proceedings in which the rights of the persons affected may be effectively asserted by such persons and will be fully protected by judicial process. As distinguished from the situations involved in such cases cited in the jurisdictional statement, no property of appellants can be taken or damaged by the Commission without just compensation, as required by Section 13 of Article II of the Illinois Constitution. In condemnation proceedings, appellants will also be entitled to a determination as to whether the Commission has the power to exercise the right of eminent domain, whether the property involved is subject to the right of eminent domain, whether the property is being taken for a public use, and whether the power is being abused. *City of Chicago* v. *Vaccarro,* 408 Ill. 587, 97 N.E. 2d 766; *Forest Preserve District of Cook County* v. *Wike,* 3 Ill. 2d 49, 119 N.E. 2d 734.

Appellants' statement that the sole object and issue in eminent domain proceedings in Illinois is the ascertainment of compensation is incorrect (p. 6, jurisdictional statement). Prior to the hearing on the question of compensation there must be, if properly raised, a judicial determination of the

four questions referred to in the last sentence of the preceding paragraph.

These questions may be raised according to their nature by motion to dismiss (demurrer) or traverse. (*City of Chicago* v. *Vaccarro, supra; Forest Preserve District of Cook County* v. *Wike, supra; Board of Education* v. *City of Chicago,* 402 Ill. 291; *Sanitary District* v. *Johnson,* 343 Ill. 11; *Smith* v. *Drainage District,* 229 Ill. 155.)

Further, the petition in eminent domain must set forth the purpose of the taking and otherwise affirmatively show the existence of the right to take the defendant's land; if the averments of the petition depend on existence of facts to be proven by extrinsic evidence, proof to the contrary may be made by the landowner just as well without an answer, as one of appellant's cases indicates (*Smith* v. *Chicago and Western Indiana Railroad Co.,* 105 Ill. 511).

Department of Public Works v. *Pittman,* 355 Ill. 482 and *Department of Public Works* v. *McCaughey,* 332 Ill. 416, cited by appellants, do not prohibit judicial review for unreasonable or arbitrary action in eminent domain but rather state that the necessity of exercise of power of eminent domain will not be the subject of judicial interference unless clear abuse of discretion, fraud, corruption, oppression or gross injustice are present.

Appellants' authorities on page 6 of the jurisdictional statement are consistent with appellees' position, except for *City of Cincinnati* v. *Vester,* 281 U.S. 439, which is not pertinent (the Ohio law permitted the testing of public use only by injunction but in Illinois this may be done in eminent domain, as previously demonstrated).

Many of the cases cited in the jurisdictional statement and referred to above (*Chicago, Milwaukee and St. Paul R. R.* v. *Minnesota,* 134 U.S. 418; *U. S.* v. *B. & O. Southwestern Ry.,* 226 U.S. 14; *Washington ex rel. Oregon R. R. & Navigation Co.* v. *Fairchild,* 224 U.S. 510; *Oklahoma Operating Co.* v. *Love,* 252 U.S. 331; *Lehigh Valley R. Co.* v. *Commission,* 278 U.S. 24; *Southern Ry. Co.* v. *Virginia ex rel. State Highway Commission,* 290 U.S. 190) are not applicable to this appeal for the *additional* reason that they deal with administrative action taken against only a named individual and the order invades the property of such individual, so that the administrative order was in the nature of a judgment directed against the individual, causing him to expend or be deprived of money or property.

Other cases cited in the jurisdictional statement (*U. S.* v. *B. & O. Southwestern Ry.,* 226 U.S. 14; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.,* 227 U.S. 88; *Ohio Bell Telephone Co.* v. *Public Utilities Commission,* 301 U.S. 292; *St. Joseph Stock Yards* v. *U. S.,* 298 U.S. 38; *Morgan, et al.* v. *U. S.,* 298 U.S. 468) are not applicable to this appeal in that they do not deal with the question presented by this appeal, namely, whether the Due Process Clause requires that notice and hearing precede the Commission's determination as to the necessity for and location of the toll highways contemplated by the Act. Rather, these cases deal with questions which are not involved in this appeal, namely, whether, in situations where a hearing by the administrative body involved was admittedly necessary, the nature of the hearing violated the Due Process Clause. In other words, there was no controversy over whether a hearing was required (by con-

stitution or statute), but the issue was whether or not all essential elements of the required hearing were present.

The remaining cases cited in the jurisdictional statement (*Davis* v. *Wallace,* 257 U.S. 478; *Manley* v. *Georgia,* 279 U.S. 1; *Thompson* v. *Consolidated Gas Utilities Corp.,* 300 U.S. 55; *Greene* v. *Louisville & Interurban R. R. Co.,* 244 U.S. 499) are not in point because they do not involve any contention that notice and hearing are prerequisite to administrative action.

CONCLUSION

It is respectfully suggested that the rulings of this Court, that due process does not require a hearing on the location and termini of roads, are based on sound reason. Under this rule the United States and the states have constructed thousands of miles of highways over a period of three decades with untold benefit to the public and to property owners.

We respectfully submit, therefore, that (a) the appeal herein be dismissed on the ground that the complaint does not involve a substantial federal question (decree reversed and remanded, with directions to dismiss on such ground), or (b) the decree be affirmed, because the questions involved are so unsubstantial as not to need further argument.

Respectfully submitted,

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Dated: April 26, 1955.

Office - Supreme Court, U. S.
FILED
MAY 14 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM 1954.

No. 742

WILLIAM H. COMBS, EDMEE S. COMBS, MELVIN T. DURLAND, ROSELLA B. DURLAND, EDWARD KOZEL, ELIZABETH KOZEL, CHESTER A. FAULKNER, ESTELL FAULKNER, MARY JANE BOLLENBACHER, RICHARD G. BOLKE, DORIS V. BOLKE, CLIFFORD R. SCHIEFELBEIN, RENELL L. SCHIEFELBEIN, HERBERT G. RHOADS, MARY G. RHOADS, GEORGE F. WILSON, WILHELMINA EUDEAN WILSON, ALBERT CARR, GENEVIEVE CARR, NELS MARTIN KIEFER, DEETA LUCILLE KIEFER, ELKER R. NIELSEN, JR., ROBERT E. NIELSEN, ELLEN N. NIELSEN, ENTERPRISE REALTY CO., a corporation, ILLINOIS CONFERENCE ASSOCIATION OF SEVENTH DAY ADVENTISTS, a religious association, ANNA A. BORG, and ELFREDA VILMA SALZMAN,

Appellants,

vs.

THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, EVAN HOWELL, WILLIAM PRINCE and ORVILLE TAYLOR, and E. A. ROSENSTONE, Director of Public Works and Buildings of the State of Illinois ex officio, constituting (with the Governor of the State of Illinois ex officio) the Illinois State Toll Highway Commission, and LATHAM CASTLE, the Attorney General of the State of Illinois,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

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Dated, May 12, 1955.

The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

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WILLIAM H. COMBS, et al., Appellants,

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

STATEMENT.

The motion to dismiss the appeal is not based on the ground that it is not within the jurisdiction of this Court because not taken in conformity to statute or the rules, but on the authority of (a) *Norumbega* v. *Bennett*, 298 U.S. 598, in which the company had had a hearing under a tax statute, the constitutionality of which was not challenged if (as the District Court found) it operated prospectively; and (b) *California Water Service Co.* v. *Redding*, 304 U.S. 252, in which the federal question sought to be raised was identical with that presented in two other cases that had just been decided by this Court.

The motion to dismiss or affirm is made upon appellees' premise (page 4) that appellants' contention (respecting the Illinois statute and the Commission's actions taken and threatened purportedly pursuant thereto) is based

solely on the absence from the Act of any requirement that the Commission created thereby hold public hearings prior to its determination of the locations or termini of the proposed routes and on the "argument" that no such public hearings were, in fact, held by the Commission, stating that questions (2) and (3) stated in the jurisdictional statement "are absent from the complaint". As appears from the statement as to jurisdiction, and not disputed, the complaint charges that the statute violates the due process clause of the Fourteenth Amendment of the Constitution not only in failing to provide for public hearings as the basis for the exercise of the delegated legislative function of making determinations affecting the property rights of plaintiffs, but in providing that such determinations shall be conclusive and not subject to review in any court or administrative proceedings, and in providing that the Commission can only be sued by bondholders and plaintiffs in damage suits, thereby depriving the plaintiffs and those whom they represent of the right to resort to the courts to test the validity of the legislation and of the Commission's acts.

We shall discuss each stated ground, as well as the federal questions presented which are not mentioned in the motion.

ARGUMENT.

I.

(Answering grounds 1, 2, 5 and 6.)

Fixing the termini of a state highway is as clearly a legislative act as fixing boundaries of an improvement district or fixing public utility rates.

(a) This Court has consistently held that due process of law requires a hearing before rights either of life, liberty or property are affected by a legislative act delegated to a non-legislative commission.

This case involves the exercise by a commission of the legislative function of fixing the termini and general location of a new route for a highway, as distinguished from the ministerial function of carrying out a legislative direction to construct a particular highway or system of highways between specified points.*

The motion concedes that "the power to locate roads and fix their termini is legislative."

In *St. Joseph Stock Yards Co.* v. *U. S. et al.* 298 U.S. 38, this Court, speaking through Mr. Chief Justice Hughes, said, at pages 50 and 51:

> "The fixing of rates is a legislative act. * * * When the legislature acts upon the broad field of legislative

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* The Tri State Highway project involving the fixing of the termini of a new route by the Commission was not before the court in **People vs. Illinois State Toll Highway Commission,** 3 Ill. 2d 218, which apparently assumed that the determinations made by the Commission would be ministerial. Though not specifically authorized by the statute, the determination by the Commission of termini is **expressly** made conclusive and not subject to review, and it is not denied that the Commission is purporting to act under the authority of the statute. **Thompson, et al, vs. Consolidated Gas Utilities Corp.,** 300 U. S. 55, 76.

> discretion, its determinations are conclusive. When the legislature appoints an agency to act within that sphere of legislative authority it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily. * * * [at page 52] Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial; others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. * * *"

In *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U.S. 292, at page 302, this Court, through Mr. Justice Cardozo, restated the rule.

In *Browning* v. *Hooper*, 269 U.S. 396, this Court said, at page 405:

> "Where a local improvement territory is selected, and the burden is spread by the legislature, or by a municipality to which the state has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits * * * but it is essential to due process of law that such owners be given notice and opportunity to be heard on that question where, as here, the district was not created by the legislature and there has been no legislative determination that their property will be benefited by the local improvement. * * *"

In *Southern Railway Co.* v. *Commonwealth of Virginia*, 290 U.S. 190, at page 197, this Court said:

> "There is an obvious difference between legislative determinations and the finding of an administrative official not supported by evidence. In theory at least, the legislature acts upon adequate knowledge after full consideration and through members who represent the entire public.

> Chapter 62 * * * makes no provision for a hearing and grants no opportunity for a review in any court. This, we think, amounts to a delegation of purely arbitrary and unconstitutional power unless the indefinite right of resort to a court of equity referred to by the court below affords adequate protection. * * * [page 198] The court below said: 'The railroad is not without remedy. Should the power vested in the highway commissioner be arbitrarily exercised, equity's long arm will stay his hand.' * * * In circumstances like those here disclosed no contestant could have a fair opportunity for relief in a court of equity. There would be nothing to show the ground upon which the commissioner based his conclusions. He alone would be cognizant of the mental processes which begot his urgent opinion. * * *"

(b) Appellees Cite No Case Holding Otherwise.

Rindge Co. v. *Los Angeles County,* 262 U.S. 700, *North Laramie Land Co.* v. *Hoffman,* 268 U.S. 276, *Georgia* v. *Chattanooga,* 264 U.S. 472, *Sears* v. *City of Akron,* 246 U.S. 242, 251, *Joslin Mfg. Co.* v. *Providence,* 262 U.S. 668, 678, all involved determinations by legislative bodies. So did *Robinette* v. *Chicago Land Clearance Commission,* 115 Fed. Suppl. 669, mandamus denied 342 U.S. 940, in which the statute set forth in the complaint and in the motion in this Court (No. 261 Misc., Oct. Term 1951, pages 25, 27 and 28) provided, in Sec. 11:

> "The commission shall be a municipal corporation and shall constitute a body both corporate and politic, exercising public and essential governmental functions. * * *"

In Sec. 12:

> "* * * The commission may hold public hearings * * * shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of witnesses and the production of books and papers; * * *"

And in Sec. 13:

> "that no such determinations shall be of any force or effect until such time as it has been approved by the State Housing Board and the governing body of the municipality in which the area is situated;"

Bragg v. *Weaver,* 251 U.S. 57 did not involve fixing termini of any highway, but the taking of earth for the repair of a road already built and in need of repairs, it being conceded that the taking was for a public use and under the sanction of a statute which contained a proviso that "such wood and other materials be not taken from any yard or garden without the consent of the owner * * *"; *Boom Company* v. *Patterson,* 98 U.S. 403, and *Backus* v. *Fort Street Union Depot Co.,* 169 U.S. 557, were condemnation suits in which the only real controversy was the amount of the award.

The attempt to put forward *City of Newark* v. *New Jersey Turnpike Authority,* 342 U.S. 874, as based on the *Rindge* case and as "clinching" the conclusion that it is indistinguishable from the instant case though successful below is abortive. The statement opposing jurisdiction and motion to dismiss or affirm in that case (Oct. Term 1951, No. 371) was on two grounds: (1) that "appellant, as a municipal corporation, cannot raise the Fourteenth Amendment against state action", citing five previous decisions of this Court for that well settled proposition and, (2) that the New Jersey Turnpike Authority provided a hearing (shown by the record and the stenographic evidence therein of hearings) and that appellant was accorded proper judicial review in the state courts. (There was no delegation of the power to select the termini of the New Jersey Turnpike, which were designated by the legislature.)

II.

(Answering grounds 3 and 4.)

Condemnation proceedings, under the Illinois Eminent Domain Law and Section 28 of the challenged Act, will not afford procedural due process, which requires a fair hearing upon the fundamental facts before the fixing of the termini and location of the project and the issuance and sale of the bonds.

Appellees would have the Court believe that after several hundred million dollars of bonds are sold and condemnation proceedings begun, each property owner would have a fair hearing therein under the eminent domain law of Illinois and the challenged statute on the questions (1) whether the project will facilitate vehicular traffic and be for the public welfare and within the stated purposes of the Act; (2) whether the project is sound and reasonable from the standpoints of (a) economics, (b) engineering, (c) highway construction, and (d) traffic control; (3) whether the particular project is necessary or expedient; and (4) whether the statute which has been held constitutional by the Supreme Court of Illinois is unconstitutional as providing for the taking of property for private use.

That this is not so, apart from the provisions of Section 28, is shown by the eight Illinois decisions cited at page 6 of the statement of jurisdiction which appellees do not question (motion, page 15); and Section 28 precludes *any* court from reviewing the determinations of the Commission that the project will facilitate vehicular traffic, be for the public welfare, that it is within the stated purposes of the Act, and that it is sound and reasonable.

So far as "testing the public use" in condemnation proceedings is concerned, it will be seen from *Sargent* v. *Cincinnati*, 110 O.S. 444, 451, cited in *Cincinnati* v. *Vester*, 281 U.S. 439, that the court in condemnation proceedings

in Ohio may, as a preliminary matter, as in Illinois but for the prohibition of Section 28, properly "inquire" as to whether the "specified" use is a public use. The Ohio property owners could sue in the state courts, whereas because of Section 27 the appellants cannot.

In the Slum Clearance Act for the District of Columbia Congress authorized the determination of the location of boundaries of each project by the commissioners, but it required public hearings, and public hearings were held. In thus providing for procedural due process Congress did not regard the hearings in the subsequent condemnation proceedings as sufficient. With respect to public highways, located as the Tri State route is located, Section 12b of Title 23 U.S.C.A., 64 Stat. 791, provides:

> "Any state highway department which submits plans for a federal aid highway project involving the by-passing of any city or town shall certify to the Commissioner of Public Roads that it has had public hearings and considered the economic effects of such a location."

Of course there is no "property right" in the prospective location of a highway. But the question is whether there is a constitutional guaranty that the decision requiring condemnation of plaintiffs' properties will not be by administrative fiat. In *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, cited by appellees, this Court recognized as a substantial federal question whether people were protected from administrative decisions made without procedural due process, though neither lives nor liberties had been lost but by change of status placed in some possible jeopardy. Here by the same methods there has been a change in the status of people's properties which they are in jeopardy of losing after the expense of condemnation proceedings to determine the forced sale price. It is submitted that a substantial fed-

eral question is presented in whether these citizens are entitled to the protection of the constitutional guaranty with respect to their properties.

III.

The motion ignores substantial questions presented by this appeal.

(a) In *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minnesota,* 134 U.S. 418, after referring at page 456 to the Minnesota statute which, as construed by the state court, made the commission's findings conclusive, and left "no power in the courts to stay the hands of the commission, if it chooses to establish rates that are unequal and unreasonable," this Court said:

> "We are of the opinion it deprives the company of its right to a judicial investigation by due process of law under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor as an absolute finality the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice."

In *St. Joseph Stock Yards Co.* v. *U. S., et al,* 298 U.S. 38, this Court said, at page 52, referring to legislative agencies, that:

> "To say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. • • • The principle applies when rights either of person or of property are protected by constitutional restrictions."

(b) In *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U.S. 292, at page 303, this Court said.

> "We have pointed out elsewhere that under the statutes of Ohio no provision is made for a review of the order of the commission by a separate or independent suit. *West Ohio Gas Co.* v. *Public Utilities Commission* (No. 1), 294 U.S. 63, 68. A different question would be here if such a suit could be maintained with an intermediate suspension of the administrative ruling. * * * How was it possible for the Appellate Court to review the law and the facts and intelligently decide that the findings of the commission were supported by the evidence when the evidence that it approved was unknown and unknowable?"

In the *West Ohio Co.* case thus cited by this Court it was said:

> "To make such review adequate the record must exhibit in some way the facts relied upon by the court to repel unimpeached evidence submitted for the company. If that were not so the complainant would be helpless for the inference would always be possible that the court and the commission had drawn upon undisclosed sources of information unavailable to others. A hearing is not judicial, at least in any adequate sense, unless the evidence can be known."

It is respectfully submitted that the questions presented are substantial, that this appeal is meritorious in that the decree and opinion dismissing the complaint evince a misconception of the decisions of this Court on important and far-reaching constitutional questions, and that the motion should be denied.

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Attorney for Appellants.

Office - Supreme Court, U. S.
FILED
MAY 16 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 743

WILLIAM H. COMBS, EDMER S. COMBS, MELVIN T. DUELAND, ROSELLA B. DUELAND, EDWARD KOZEL, ELIZABETH KOZEL, CHESTER A. FAULKNER, ESTELL FAULKNER, MARY JANE BOLLENBACHER, RICHARD G. BOLER, DORIS V. BOLER, CLIFFORD R. SCHIEFELBEIN, RENNELL L. SCHIEFELBEIN, HERBERT G. RHOADS, MARY G. RHOADS, GEORGE F. WILSON, WILHELMINA EUDEAN WILSON, ALBERT OARR, GENEVIEVE OARR, NELS MARTIN KIEFER, DENTA LUCILLE KIEFER, NIELS R. NIELSEN, JR., ROBERT R. NIELSEN, ELLEN K. NIELSEN, ENTERPRISE REALTY CO., a corporation, ILLINOIS CONFERENCE ASSOCIATION OF SEVENTH DAY ADVENTISTS, a religious corporation, ANNA A. BORG, and ELFREDA VILMA SALSMAN,

Appellants,

vs.

THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, EVAN HOWELL, WILLIAM PRINCE and ORVILLE TAYLOR, and E. A. ROSENSTONE, Director of Public Works and Buildings of the State of Illinois ex officio, constituting (with the Governor of the State of Illinois ex officio) the Illinois State Toll Highway Commission, and LATHAM CASTLE, the Attorney General of the State of Illinois,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO ADVANCE CONSIDERATION OF APPELLEES' MOTION TO DISMISS OR AFFIRM; LIMIT TIME FOR FILING PETITION FOR REHEARING AND TO ISSUE MANDATE FORTHWITH.

WILLIAM W. SCHWARZER and
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Special Assistant Attorneys General, State of Illinois,

JOHN L. DAVENDON, JR.
First Assistant Attorney General, State of Illinois,

GEORGE W. McGONIGAL,
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Attorney for Appellees.

Dated: May 16, 1955.

Lakeside Printing Company, Chicago—GA 1-0-1955

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

No. 742

WILLIAM H. COMBS, EDMEE S. COMBS, MELVIN T. DURLAND, ROSELLA B. DURLAND, EDWARD KOZEL, ELIZABETH KOZEL, CHESTER A. FAULKNER, ESTELL FAULKNER, MARY JANE BOLLENBACHER, RICHARD G. BOLKE, DORIS V. BOLKE, CLIFFORD R. SCHIEFELBEIN, RENELL L. SCHIEFELBEIN, HERBERT G. RHOADS, MARY G. RHOADS, GEORGE F. WILSON, WILHELMINA EUDEAN WILSON, ALBERT CARR, GENEVIEVE CARR, NELS MARTIN KIEFER, DEETA LUCILLE KIEFER, ELKER R. NIELSEN, JR., ROBERT E. NIELSEN, ELLEN N. NIELSEN, ENTERPRISE REALTY CO., a corporation, ILLINOIS CONFERENCE ASSOCIATION OF SEVENTH DAY ADVENTISTS, a religious association, ANNA A. BORG, and ELFREDA VILMA SALZMAN,

Appellants,

vs.

THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, EVAN HOWELL, WILLIAM PRINCE and ORVILLE TAYLOR, and E. A. ROSENSTONE, Director of Public Works and Buildings of the State of Illinois ex officio, constituting (with the Governor of the State of Illinois ex officio) the Illinois State Toll Highway Commission, and LATHAM CASTLE, the Attorney General of the State of Illinois,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO ADVANCE CONSIDERATION OF APPELLEES' MOTION TO DISMISS OR AFFIRM; LIMIT TIME FOR FILING PETITION FOR REHEARING AND TO ISSUE MANDATE FORTHWITH.

Now come Appellees herein and hereby respectfully move the Court:

(1) That consideration of Appellees' motion to dismiss or affirm be advanced so that a decision thereon may be

had at this term of the Court, Appellants' time for filing their brief expiring May 16, 1955.

(2) That the period of time within which Appellants or Appellees may file a petition for rehearing, if one is permissible under any Rule of this Court, be shortened to a period of five days following the Court's decision on Appellees' motion to dismiss or affirm, and

(3) That in the event Appellees' motion to dismiss or affirm is granted that the mandate of the Court be issued forthwith to the United States District Court for the Northern District of Illinois, Eastern Division.

In support of the above and foregoing motion, Appellees state the following grounds:

(a) Appellants filed their complaint in the United States District Court for the Northern District of Illinois, Eastern Division, on December 17, 1954, and prayed for the issuance of a temporary and permanent injunction. Thereafter, Appellants at no time during the pendency of the proceedings in the trial court moved to obtain a temporary injunction. On February 9, 1955, the trial court dismissed Appellants' complaint for want of equity, and thereafter on March 7, 1955, Appellants filed and served notice of appeal to this Court. On or about April 22, 1955, Appellants filed the record with the Clerk of this Court, together with their jurisdictional statement. Although at no time has an injunction been issued, nevertheless Appellants have had the same advantage as though an injunction had been in effect. Appellants have had this advantage because Appellees have been unable to issue and market bonds to finance the construction of the proposed Northern Illinois Toll Highway since the original suit attacking the constitutionality of the Illinois Toll Highway Act

was instituted in the trial court and during the pendency of the appeal from the decision of that court. Thus, without cost or risk to Appellants, Appellees are as effectively restrained as if an injunction or supersedeas were in effect.

(b) So long as this appeal remains pending, it delays the construction program of the proposed Northern Illinois Toll Highway, thereby:

1. preventing the needed relief from traffic congestion on present highways,

2. preventing the public from receiving the benefit of safer highway transportation because the proposed Toll Highway, with limited access and modern construction, would reduce the accident rate,

3. preventing the public from benefiting from more economical cost of operating motor vehicles which would result from the type of construction of the proposed highway, and

4. delaying the time when bonds can be paid off and the highway turned over to the State of Illinois as a free highway, because of the increasing interest cost on borrowed money to finance the construction.

(c) Since commencement of this suit, interest costs, due to competition of other borrowers, have increased and a continued upward trend is expected in rates due to the increased demand for money. Owners of real estate in the location of the proposed routes may well be proceeding with improvements, being assured of a court determination of compensation for the fair market value of their property to be received before such property is taken under the law of eminent domain in

Illinois, and thus the cost of acquisition of right-of-way is increasing. Basic construction costs are also rising.

Respectfully submitted,

WERNER W. SCHROEDER and
THEODORE W. SCHROEDER,
Special Assistant Attorneys General, State of Illinois,

JOHN L. DAVIDSON, JR.,
First Assistant Attorney General, State of Illinois,

GEORGE W. MCGURN,
Assistant Attorney General, State of Illinois,
Of Counsel.

LATHAM CASTLE,
Attorney General,
State of Illinois,
Suite 900, 160 N. LaSalle St.,
Chicago 1, Illinois,
Attorney for Appellees.

Dated: May 16, 1955.

STATE OF ILLINOIS }
COUNTY OF COOK } ss:

LATHAM CASTLE, being first duly sworn, on oath deposes and says that he is Attorney General of Illinois and a defendant herein, and that he has prepared the foregoing motion.

Further on oath affiant says that the statements of fact therein made are true.

Affiant further says that delay of a decision in this case beyond this term of Court will delay the completion of the project at least one year beyond the estimated completion date and seriously interfere with the integrated road program of the State of Illinois, the County of Cook and the Federal Government; all roads that can be constructed now are needed to eliminate traffic congestion and hazards.

Further affiant sayeth not.

Latham Castle

SUBSCRIBED AND SWORN to before me, a Notary Public, this 13th day of May, 1955.

Alice M. Kortlauer
Notary Public.

Office - Supreme Court, U.S.
FILED
JUN 2 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM 1954.

No. 742

WILLIAM H. COMBS, ET AL.,
Appellants,

vs.

THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

PETITION FOR REHEARING.

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111 W. Washington Street,
Chicago 2, Illinois,
Attorney for Appellants.

Dated, June 1, 1955.

The Scheffer Press, Inc.—ANdover 3-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1954.

No. 742

WILLIAM H. COMBS, ET AL.,

Appellants,

vs.

THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

PETITION FOR REHEARING.

Petitioners pray that this Court reconsider its order of May 31, 1955, affirming the judgment, for the reasons herein stated.

REASONS FOR GRANTING REHEARING (RECONSIDERATION).

1. Petitioners did not oppose the motion to advance consideration of the motion to dismiss or affirm, but their failure to do so does not mean that they admit the assumptions at page 3 of the motion to advance that the proposed Tri State Toll Highway will afford needed relief from traffic congestion and benefit the public. The proposed highway, planned without public hearings or

other procedural safeguards, will not alleviate congestion nor lead traffic out of Chicago. It is a limited access highway, and a belt around Chicago which can strangle that city's populace in the event of an atomic attack. The District Court said "to err is human", but in this situation to err is catastrophic.

2. The District Court based its decision entirely upon *Rindge Co.* v. *Los Angeles County,* 262 U. S. 700, which it stated is controlling. This Court, by affirming without opinion, apparently regarded this case as controlled by that decision. The holding that notice and hearing is not necessary to due process in the delegation of the legislative function to a legislative body is thus extended to the delegation of the legislative function to a non-legislative body, and the distinction heretofore made by this Court and emphasized in the *Rindge Co.* case itself is thus abolished.

3. The *Rindge* case did not involve a delegation of power to a commission. It did not involve a state highway, or a system of state highways. It did not involve a statute relating to, or providing for any state highway or system of highways. The county roads involved in that case were not *provided for* either directly or indirectly by the statute in question, which was an amendment of the Eminent Domain Act of California. If the California legislature ever delegated any authority it was not delegated in the Act in question in that case, but had been delegated long before, not merely to the Board of Supervisors of Los Angeles County, but to all of the legislative bodies of all of the counties of the state, because the constitution of California of 1879, in Article VI, Section 25, prohibited the legislature from passing any local or special laws authorizing the laying out of highways, streets or alleys.

The legislature of California could not have located any road in Los Angeles County, and the roads in question in the *Rindge* case had to be located by a resolution of a duly elected legislative body of the county known as the Board of Supervisors. This Court, in the *Rindge* case, pointed out that Section 1241, as amended in 1913, which was there in question

> "Provided, *inter alia,* that when the legislative body of a county has by resolution * * * found that the public interest and necessity require the construction by the county of any proposed public improvement located within its limits * * * such resolution shall be 'conclusive evidence' of the public necessity," etc.,

and that

> "In 1916 and 1917 the Board of Supervisors, the legislative body of Los Angeles County, without notice to the ranch owners, adopted by the required vote two resolutions * * *."

In providing a rule of evidence in the Eminent Domain Act the California legislature made it as unnecessary for the legislative body locating a road to allege and prove public necessity or propriety of the exercise of the right of eminent domain as it is in Illinois. The California legislature, in that Act, did not delegate any authority to an executive appointed commission, or to any other body to locate county roads, or to perform any function of the legislature.

4. Not only did the *Rindge* case not hold that the legislative body may delegate its legislative function to a commission and authorize the commission to make a finding that will affect property rights without a public hearing at any level, but there was no contention that the property owners had been deprived of a hearing. In

their briefs they repeatedly acknowledged that they had a full and complete hearing in the condemnation proceedings, which petitioners could not have under the Illinois statute.

5. The excesses of this Commission, as shown by the record in this case, demonstrate the wisdom of the rule previously followed by this Court in numerous cases cited in our brief that when the legislature appoints a *non-legislative* agency to act within the sphere of legislative authority, and endows it with power to make findings of fact, the requirements of due process must be met in according a fair hearing and acting upon evidence and not arbitrarily, that

> "Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands * * * It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence."

6. The *Rindge* case had nothing to do with a review of a commission's order. The Illinois statute not only makes no provision for review of the Commission's determinations, but provides expressly that they shall not be subject to review by any court or administrative body. This Court said, through Mr. Justice Cardozo, in *Ohio Bell Telephone Co.* v. *Public Utilities Commission,* 301 U.S. 292, 303:

> "We have pointed out elsewhere that under the statutes of Ohio no provision is made for a review of the order of the commission by a separate or independent suit * * * A different question would be here if such a suit could be maintained with an intermediate suspension of the administrative ruling * * * Regulatory commissions have been invested with broad powers * * * All the more insistent is the need,

when power has been bestowed so freely that the 'inexorable safeguard' (*St. Joseph Stockyards* v. *U.S.*, 298 U.S. 38, 73) of a fair and open hearing be maintained in its integrity. *Morgan* v. *U.S.*, 298 U.S. 468, 480, 481; *Interstate Commerce Commission* v. *Louisville & N. Ry., supra* [227 U.S. 88, 91]. The right to such a hearing is one of the 'rudiments of fair play' (*Chicago, M. & St. P. Ry. Co.* v. *Polt*, 232 U.S. 165, 168) assured to every litigant by the Fourteenth Amendment as a minimal requirement. • • • There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harrassing delay when that minimal requirement has been neglected or ignored."

7. Petitioners recognize that haste in improving Illinois' system of highways is vital to the survival of the state and the nation. Haste is necessary in this case, but should be directed toward the welfare of the people. Petitioners have charged that the Commission's plans in this case are unreasonable and arbitrary, and pray that procedural due process developed through the wisdom of the ages be not lost sight of in a mad dash for an investment opportunity.

Respectfully submitted,

JOHN J. YOWELL,
111 W. Washington Street,
Chicago 2, Illinois.
Counsel for Petitioners.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

.....

JOHN J. YOWELL,
Counsel for Petitioners.